

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KOLOLO
HCT-00-ACD-SC-NO. CO-0005-2016

Uganda:::::::::::::::::::::::::::::::::::::Prosecutor
Versus
Yudaya Ntumwa:::::::::::::::::::::Accused

Before: Hon. Lady Justice Margaret Tibulya

Judgment

The accused stands charged with Money Laundering C/S 116 (c) & 136 (1) (a) of the Anti-Money Laundering Act 2013. In the alternative she was charged with receiving stolen property C/S 314 (1) of the Penal Code Act, CAP 120.

The brief facts of the case are that on 2nd November 2014 the accused a client of the KCB bank lung Lwamulungi Sebastian, then Head Teller at Bank's Kampala road branch and asked to meet him. When they met she informed him that she had secured a 1.5m USD deal with M/s Basco paints, but that she needed USD 200,000 to pay commission Agents. She asked him to get her that money claiming that the Basco paint deal was a sure deal, and that the USD 200,000 would be refunded that very day with interest of USD 20,000. Lwamulungi got bank money and gave it to her the next day.

After he gave her the money, during the course of that day he got in touch with her and she promised that by close of day she would be at the bank with the cash. She however did not go back to the Bank.

On seeing that she had not come through and in order to buy time, Lwamulungi posted a transaction of the same amount on an internal account. On Thursday 6th November 2014 she informed him that she had been conned.

The accused (**Yudaya Ntumwa**) testified that she has been a money changer for 30 years. Towards the end of October 2014 she heard over the radio when some people were praying for believers. Testimonies were being given by some people about how they had overcome their problems. Since she was in heavy debt she decided to seek a solution from that place. When she went there she met a man (a Pastor) to whom she narrated her problem. The man assured her that her problem would be solved. As they prayed, money which was in a wooden box fell from above. She thought it was Biblical manna. The man then locked the box and instructed her to take it home, and only open it after further instructions. He also instructed her not to reveal anything to anybody.

When she got home she followed his instructions, but when she tried to open the box it could not open. When she informed the man, he asked her to take him money before the suit case could be opened. Convinced that the box indeed contained a lot of money, she on the 31st of October withdrew **USD 48,000** from her own account and took it to him, but the box could still not open when she

tried to open it. She again informed him, and he asked for more money. She approached Pw1 and asked him to get her someone who could lend her money.

He gave her **USD 133, 000\$** which she took to the man, but the box still refused to open. She got a further **USD 37,000** from the Standard chartered bank through her daughter (**Dw2-Aliya Kayaga**) who was working there, and gave all of it to the pastor. At the end of all this, the box, when forcibly opened was found empty. She realized that she had been conned and she reported the matter to the police. Some suspects were arrested.

Burden and standard of proof.

The state bears the burden of proving these allegations beyond reasonable doubt. The accused is not under any obligation to prove her innocence. Where any doubt exists in the prosecution case it should be resolved in favor of the accused person, (see **Kiraga V Uganda (1976) HCB 305**).

To prove the charge of money laundering, the state had to prove that;

- The accused (**Yudaya Ntumwa**) had in her possession **USD 200,000**.
- She had reason to believe at the time of receipt that the money was proceeds of crime.

Whether the accused (Yudaya Ntumwa) had in her possession USD 200,000.

The prosecution maintains that the accused was given 200,000 USD. The defence however maintains that she was given USD 133,000 only. I note that the defence did not challenge Pw1 (Lwamulungi)'s evidence that he gave her 200,000 USD. Secondly, the accused stated in her police statement (**exhibit P3**) that she received 200,000 USD.

In her evidence however she testified that she was given only 133,000 USD, but that Pw1 told her to record in her statement that she had been given 200,000 USD. The reason for that, she said was that they would then return the balance of 67,000 USD to the Bank to temporarily calm down the situation, and allow them more time to pursue the thieves. The accused by the above statement in fact concedes that the USD 200,000 ever existed thereby lending credence to Pw1's evidence that he withdrew it in relation to the transaction in issue.

That apart, I did not believe the accused's account of events. As I have already pointed out, the defence did not challenge Pw1's evidence (in cross examination) that he gave her 200,000 USD. Secondly, the fact that there was some 67,000 USD somewhere which was to be given to the bank was only mentioned by the accused when she was testifying. She neither put it to Pw1 nor reveal it to anyone else. The accused's evidence in this regard must therefore be taken as an afterthought.

Thirdly, in cross examination she testified that by the time she recorded her statement **Pw1 (Lwamulungi)** was in custody at Kireka SIU. It is therefore not possible that he instructed her to write her statement in a particular way, or that he told her to mention **200,000 USD** instead of **133,000 USD**.

Lastly, the defence own witnesses **Dw3 (Yiga Francis Banalekaki), Dw5 (Francis Xavier Katumba)** and **Dw6 (Ali Humphery Tunga)** all confirmed that Pw1 removed 200,000 USD from the Bank Vault.

This means that the **200,000 USD** actually existed at the time Pw1 transacted with the accused. The evidence that it was given to the accused is therefore not far-fetched and must be believed.



Moreover, **Dw4 (Nabakooza)** confirmed that the allegation which was made to the police (even by the accused herself to Kisubi police) was that **200,000 USD** had been given to her and that it had been stolen from her. Her evidence shows consistence of complaint in as far the amount involved was concerned.

Other than the accused, the only other witness who testified about the possibility that only 135,000 USD was given to the accused and that between **USD 15,000** and **20,000 USD** was handed over to one **Emanzi Andrew** by Pw1 was **Dw6 (Ali Humphery Tunga)**. **Dw6** was however clear that his evidence was based on an estimation (even in Exhibit D4 he just gives estimates). Moreover, he emphasized that the only person who can tell where the **50,000 USD** went was

Pw1, who was positive that the accused told him that she needed **200,000 USD**, which he gave her. His evidence must be believed especially since it was not challenged in cross examination. The evidence that he gave any money to **Emanzi** was never put to him to give him opportunity to accept, explain or deny it.

I find that the accused was given **200,000 USD** by Pw1, and that therefore she had in her possession **200,000 USD** as alleged in the indictment. **The first issue is answered in the affirmative.**

Whether she had reason to believe at the time of receipt that the money was proceeds of crime.

In resolving this issue, it must be determined whether the money in issue were proceeds of crime. In this regard it is important to note that **Pw1 (Lwamulungi)** was convicted on his own plea of guilty of the offence of theft of the **200,000 USD** which is the subject of these charges. On the basis of that plea of guilty to theft by Pw1, **I find that the 200,000 USD was indeed proceeds of crime.**

On whether she had reason to believe at the time of receipt of the money that it was proceeds of crime, **Pw1 (Lwamulungi)**'s evidence was that the accused told him that she had got a deal with Basco paints worthy 1.5m USD, and that she needed **200,000 USD** to pay commission agents who were supposed to give her

the deal. At the time he gave her the money she did not mention any pastors or existence of US dollars in a box she had left home.

She maintains that she was warned by the pastor not to reveal that there were US dollars in the box she had been given, a fact that the defence seeks to rely on to explain away the fact that instead of mentioning to Pw1 the miraculous USD 1.5m in a wooden box in her house, she told him about a paint deal with Basco.

First of all, the defence assertion that the pastor warned the accused not to tell anybody about the existence of the USD 1.5m cannot be true, given the evidence that the accused learnt about the pastor's activities through a radio program, meaning that they were advertising their services. The same person who sought to have more people go to him for his services could not have warned the accused not to tell anyone about the miracle of the 1.5 m USD.

Secondly the fact that she told a lie to Pw1 is not lost to the court. This is very strange for a bible believer who portrays herself as having whole heartedly and blindly believed in prayers as a way to miraculous problem solving.

Moreover, in all this it is very strange that the accused's business experience of over 30 years seems to have only come in handy when it came to her choice of what to tell Pw1 in order to get the 200,000 USD. The narrative she chose to rally to him, the Basco paints supply would ordinarily make good business sense as it appears to be a credible paints supply contract, the reason Pw1 was convinced

and took a risk to give her Bank money. For a business lady of 30 years standing not to have known that money is not acquired through prayers is unbelievable. It is not possible, and I refuse to accept that the accused had selective presence of mind. The truth is, (**and it is my finding of fact**) that the whole story about the miraculous USD 1.5 million is a fabrication, just as the Basco paints deal was.

It is in evidence that Pw1 informed the accused that he was getting the money from the bank, and in fact gave it to her at Kampala road branch.

Her evidence that this was not so must be taken as an afterthought since she did not challenge Pw1 on his evidence.

Prior to handing her the money she gave him a parcel containing a land Title and a log book for M/V UAK 981P CRV Honda, to assure him that she would return the money. He had not asked for the log book and land title. This evidence was also not challenged in cross examination.

The defence sought to rely on evidence that the accused;

1. Only asked Pw1 **to find her someone**, not Pw1 necessarily who could lend her the money,
2. was very sure that she could refund the money since she believed that she had left a lot of money in a box at home,

3. On the basis of the same conviction, she put in her personal money and Standard Chartered Bank money which her daughter got under similar circumstances, with similar consequences as Pw1.

In relation to the above, i note that the defence did not put the following pieces of evidence to Pw1 to give him an opportunity to confirm or deny them;

- that the accused only asked him to find her **someone** who could lend her the money,
- that he told her that he would try to contact people to see if someone would lend her money and then call her,
- that he called her and told her that he had got someone to lend her the money,
- that he told her to take to him some kind of security, and
- that when she got to his office he called her in, that she went to where he was sited and he asked her whether she had taken the security he had told her and she gave him the envelope with the title.

That evidence cannot be believed, especially since Pw1 was clear that she only told him that she needed the money and then advanced enticing offers which convinced him take the risk.

It could not have been a mere coincidence that she chose to approach a Banker to whom he advanced her suggestions and unreasonably enticed with an offer of 20% interest on the money.

It is also not a mere coincidence that she in addition approached another banker (Dw2) to get more money for the transaction. She knew that these bankers had access to bank money which they could irregularly give to her, for Pw1 (on the basis of the lies she told) and for Dw2 on the basis of her being her mother. Her suggestion to Pw1 that she would return the money that very day must be taken to mean that she was aware that it could only be irregularly got from the bank, where if it was not returned on the very day Pw1 would be caught. She therefore sought to allay his fears of getting caught through the reconciliation process.

The accused's narrative to Pw1 that she had secured a deal with Basco paints (**which she admits was a lie**) must be taken to have been deliberately crafted to make him believe that she had a credible, overly profitable yet very reliable venture, which he could take a risk and irregularly inject bank money into. That she was seeking to get money through so called prayer based miracles yet she advanced a completely different reason for her need for it exposes her as a manipulative and unreliable consummate liar. The only reason she lied to him was to entice him to irregularly give her the USD 200,000 from the bank. She is a money changer of 30 years standing and knows how bank loans are got, and she admits that she knew that Pw1 was not a money lender.

She also does not deny that she picked the money from Pw1 (Lwamulungi) from KCB, another indication that she knew that it was for the bank. Her evidence that in her mind she was borrowing the money from Lwamulungi or from whoever

gave it to him is a pack of lies since to her admission the first time she met Lwamulungi he told her that he did not have the USD200,000. Moreover, she did not sign any money lending agreement with Lwamulungi or any person.

It would be unprecedented for a person to lend such a huge amount of money without formal agreement. Pw1 in fact told court that she convinced him that her business was supposed to be an immediate transaction that **had no risk in it**, and that he was eventually convinced that it was a one day's transaction which prompted him to take a risk and get bank money with an expected interest of about 20,000 USD.

It was in evidence that when she went for the money she took land titles and car log books which Pw1 had not demanded for, and Pw1 testified that those items were only meant to convince him that the money would be taken back that very day, and not to be securities for a loan.

The accused's testimony that she knew Pw1 because of his employment status in KCB bank supports the narrative that she knew that he got the money from the bank.

S. 122 of the evidence Act provides that a court may infer the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

In this regard, the fact that Pw1 informed the accused that he was getting the money from the bank, taken together with the fact that the accused is a money

Changer of 30 years standing and therefore is well versed with how money is got from the bank must be read to mean that she had reason to believe that the money she got were proceeds of crime.

The above position is galvanized by the accused's own testimony that she has been in business for quite some time and that she knows a number of people who have money, but she did not approach any of them to lend her the money. She instead approached Pw1 and Dw2, both bank workers who gave her bank funds. Moreover, the amount involved, 200,000 USD is colossal by any standards. It cannot be that the accused expected to get it as casually as she did, which is why she labored to convince a banker to irregularly get it for her.

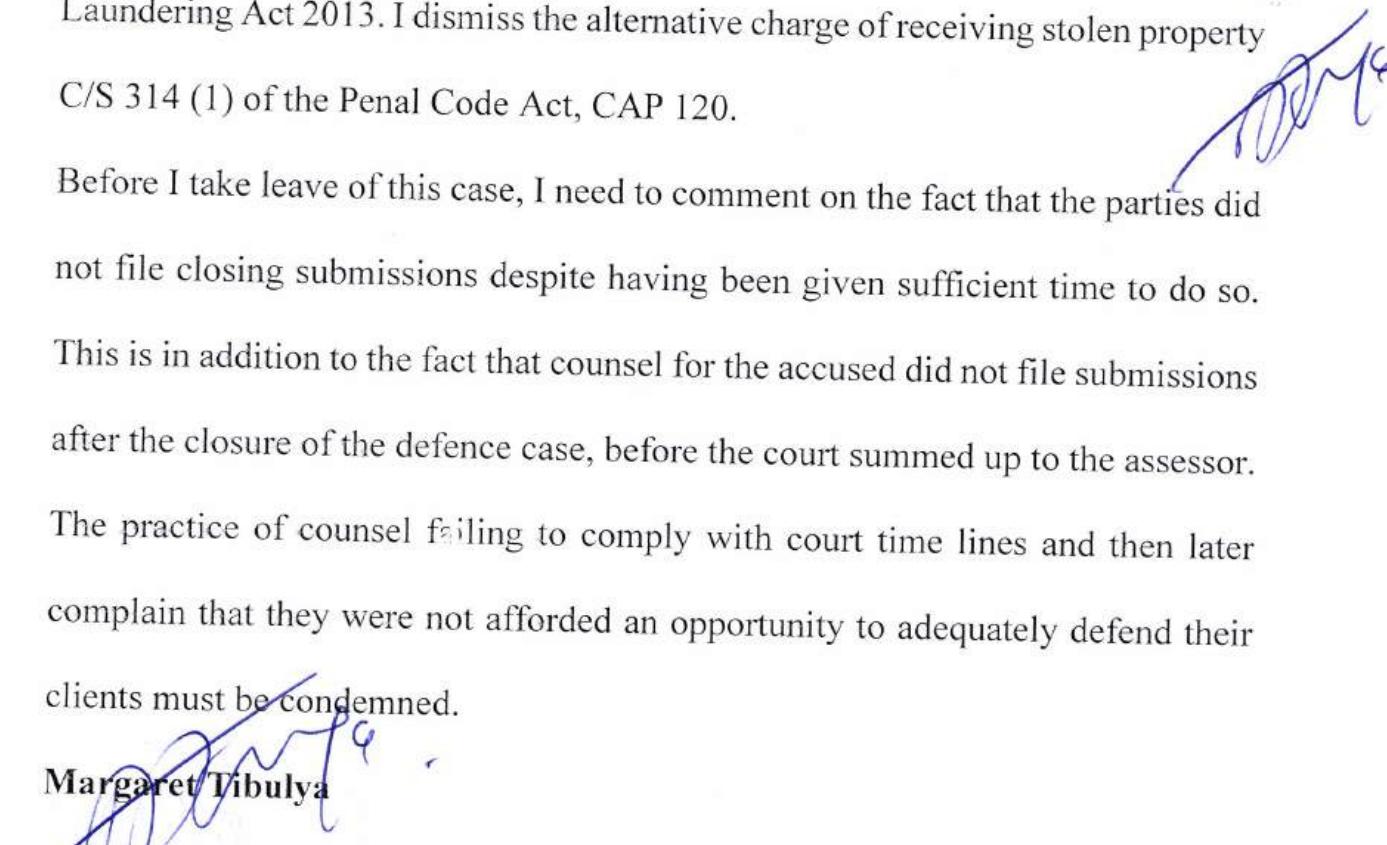
I also noted a major falsehood in the accused's testimony which renders her evidence unworthy of credit. In her evidence in chief, she mentioned that she paid the so called pastors 48,000 USD on 31st October 2014. This was before she got the 200,000 USD from Pw1. Yet in cross examination she testified that she got both the 200,000 USD and the **48,000 USD** on 3rd November 2014. She said that she had two transactions on that day, one of which was the withdrawal of Kenya shillings (**which she changed to 48,000 USD**), and that **Pw1 (Lwamulungi)** carried out both transactions. This contradiction is major since it points to a deliberate lie.

The defence sought to rely on the fact that when the accused was defrauded, she filed a case with the police and that some suspects were arrested, to show that she

was an honest individual who was defrauded. That evidence is however irrelevant to the money laundering charge, which is grounded on the fact that she knowingly received illicit money.

I carefully considered the evidence, both prosecution and defense and for the reasons I have given and in agreement with the lady assessor, I find that the accused received the money in issue knowing that it was proceeds of crime. I convict her of Money Laundering C/S 116 (c) & 136 (1) (a) of the Anti-Money Laundering Act 2013. I dismiss the alternative charge of receiving stolen property C/S 314 (1) of the Penal Code Act, CAP 120.

Before I take leave of this case, I need to comment on the fact that the parties did not file closing submissions despite having been given sufficient time to do so. This is in addition to the fact that counsel for the accused did not file submissions after the closure of the defence case, before the court summed up to the assessor. The practice of counsel failing to comply with court time lines and then later complain that they were not afforded an opportunity to adequately defend their clients must be condemned.


Margaret Tibulya

Judge

5th July 2020

YUDAYA NTUMWA SENTENCE

I heard and considered all that was said by both parties in mitigation and aggravation of sentence. In particular, I have considered that the convict has no available past criminal record and that she was already a civil prisoner when she was charged. Also that she is a widow having been widowed at 30 years, she was 59 years old when she was charged in court and is now 65 years old.

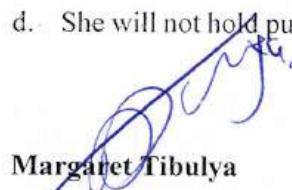
I have further considered that she has a family of 6 children to take care of, two of whom are special needs children, one of whom, **Mubiru Patrick** is mentally derailed and constantly attends **Butabika mental hospital**, and the other is mute and dumb, and is constantly under her care. Also that the convict is diabetic, and attends **Mayo hospital** where her records are.

On the other hand, I have considered the value of the subject matter, **USD 200,000** which is quite a high amount of money. Also that there was premeditation in committing the offence, involving the convict convincing Pw1 to give her the money. The court has not forgotten the fact that Pw1 ended up losing his job and paid a lot of money in compensation, all because of the accused's actions.

And, as the prosecution submitted, the offence of Money laundering is serious, and in this case it directly disrupted commerce. Counsel for the accused asked the court to look at the circumstances under which the crime was committed and tamper justice with mercy, and give a lenient sentence. The court has however been clear that those circumstances were fabricated by the convict to make it appear that she was a victim whereas not.

Having considered all factors as brought to the courts attention I sentence the accused as follows;

- a. She will serve **8 year's imprisonment** for the offence of money laundering for which she has been convicted.
- b. I am aware that Pw1 gave up one piece of land in partial compensation to the Bank. The accused who was the master mind of the crime is hereby ordered to pay compensation of **USD 200,000** to the complainant bank.
- c. The cash bail of **6m/=** she deposited in court will go to the bank as part of the compensation.
- d. She will not hold public office for a period of **10** years from today. **Right of Appeal explained.**


Margaret Tibulya

Judge.

28th July 2020.