

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA HOLDEN AT KOLOLO  
NO.HCT-00-AC-SC -0011-2015**

**UGANDA:..... PROSECUTION**

**VERSUS**

**SSERWAMBA DAVID MUSOKE & 6 OTHERS:..... ACCUSED**

**JUDGMENT**

**BEFORE: HON.LADY JUSTICE MARGARET TIBULYA**

**The accused stand jointly charged as follows;**

<b>COUNT</b>	<b>OFFENCE</b>	<b>ACCUSED</b>
Count 1	<b>Embezzlement of USD 700,000 C/S 19(b) (1) (11) ACA.</b>  <b>ALTERNATIVE</b> <b>Causing Financial loss of USD 700,000 C/S 20 ACA.</b>	<b>A1 Sserwamba David Musoke</b>  <b>A2 Okoth Reagan</b>  <b>A3 Kavuma Moses</b>
Count 2	<b>Embezzlement of USD 500,000 C/S 19(b) (1) (11) ACA.</b>  <b>ALTERNATIVE</b> <b>Causing Financial loss of USD 500,000 C/S 20 ACA.</b>	<b>A1 Sserwamba David Musoke</b>  <b>A2 Okoth Reagan</b>  <b>A3 Kavuma Moses</b>
Count 3	<b>Embezzlement of USD 250,000 C/S 19(b) (1) (11) ACA.</b>  <b>ALTERNATIVE</b> <b>Causing Financial loss of USD 250,000 C/S 20 ACA.</b>	<b>A1 Sserwamba David Musoke</b>  <b>A2 Okoth Reagan</b>
Count 4	<b>Money Laundering c/s 116 (c) &amp; 136 (1) (a) AMLA.</b>	<b>A4 KalungiAbubaker Alias Manirakiza</b>
Count 5		<b>A5 Shafiq Mubarak</b>

	<b>Money Laundering c/s 116 (c) &amp; 136 (1) (a) AMLA.</b>	
Count 6	<b>Money Laundering c/s 116 (a) &amp; 136 (1) (a) AMLA.</b>	<b>A4 KalungiAbubaker Alias Manirakiza</b>
Count 7	<b>Money Laundering c/s 116 (a) &amp; 136 (1) (a) AMLA.</b>	<b>A4 KalungiAbubaker Alias Manirakiza</b>
Count 8	<b>Money Laundering c/s 116 (a) &amp; 136 (1) (a) AMLA.</b>	<b>A4 KalungiAbubaker Alias Manirakiza</b>
Count 9	<b>Money Laundering c/s 116 (c) &amp; 136 (1) (a) AMLA.</b>	<b>A6 Keeya Mathew</b>
Count 10	<b>Money Laundering c/s 116 (a) &amp; 136 (1) (a) AMLA.</b>	<b>A6 Keeya Mathew</b>
Count 11	<b>Money Laundering c/s 116 (a) &amp; 136 (1) (a) AMLA.</b>	<b>A1 Sserwamba David Musoke</b>
Count 12	<b>Money Laundering c/s 116 (c) &amp; 136 (1) (a) AMLA.</b>	<b>A7 Sserwamba Isaac</b>
Count 13	<b>Conspiracy to commit a felony c/s 390 PCA.</b>	<b>A1 Sserwamba David Musoke A2 Okoth Reagan A3 Kavuma Moses A4 KalungiAbubaker Alias Manirakiza A5 Shafiq Mubarak A6 Keeya Mathew A7 Sserwamba Isaac</b>

The brief facts are that A1 (**Sserwamba David**), A2 (**Reagan Okoth**) and A3 (**Kavuma Moses**) were working as Operations Manager, Cash Officer and Teller respectively, at the Oasis Mall Branch of M/s Equity Bank. A1 and 2 were A3's supervisors.

On the 28<sup>th</sup> March 2015 **A2 (Reagan Okoth)** on **A1's (Sserwamba David)** instructions called the cash centre and asked for USD 1M. The amount being huge he was advised to send the customer to be served at the Cash Center, but he insisted on them being served at Oasis branch. Since the branch already had some money he was advised to instead lodge a request for **USD 800,000 (exhibit P1.b)**, which he did with A1's approval. The money was subsequently received by both of them. A total of **USD 1,450,000** was later paid out to fraudsters at the branch as follows.

- On the 28/3/2015 **USD 700,000** was paid from A/C No. 2001211113233 to a purported **SiscoMajokMakomMajok**.
- On 29/3/2015 **USD 500,000** was again paid to the same person from the same Account.
- On 29/3/2015 **USD 250,000** was paid to a purported **MabiorAcuhangAjangAtem** from A/C No. 200211267004

All the three payments were disowned by the Accounts holders. The bank, believing that the transactions were fraudulent refunded the money to them.

**It was in evidence that;**

1. Biometric identification was not conducted to confirm the identity of the persons who were paid yet the system was running.
2. Soon after the fraud a video depicting people who were playing with bundles of dollars was circulated on the internet.

A1, 2 and 3 were arrested on the basis of their respective roles in the transactions, and, following leads given by **Pw1 (Joseph Mugisha)**, **Pw2 (Matovu Kenneth)**, **Pw3 (Lubega Bernard)**, **Pw4 (Isaac Moshen)** and **Pw5 (Mutesasira Ali)**, the rest of the accused persons were arrested and properties including money, motor vehicles, pieces of land, phones and watches were recovered.

The prosecution adduced the evidence of **25** witnesses while the defence had nine witnesses including the seven accused persons.

Six associates/friends/relatives of some of the accused persons testified as follows;

**A4 (KalungiAbubaker)** owed **Pw1 (Mugisha Joseph)** Ugx 15,000,000/= . On information that **A4** had got a lot of money, (**Pw1**) rung him and he (**A4**) gave him **5,000,000/=**. **A4** who was with **Shafiq Mubarak (A5)** was very excited over a sugar deal with some Sudanese. He confided in **Pw1** that he had bought land in Buziga and purchased a house for his mother. On **A4's (Kalungi)** request, a **Silver ML 4-matic Mercedes Benz** and **USD 200,000** were taken to his (**Pw1's**) residence for safe custody. The **USD 200,000** was subsequently spent as follows;

- **UsD 3,000** was given to one Rajab, **A4's** brother,
- **UsD 30,000** was picked by **A4**,
- **US\$ 20,000 (UsD 10,000** of which was a loan to **Pw1**) was retained by **Pw1**,
- The balance of **UsD 146,000** was returned to **A4 (KalungiAbubaker)** with the vehicle.

**A6 (Keeya Mathew)** informed **Pw2 (Matovu Kenneth)** and **Pw3 (Lubega Bernard)** about the arrest of **DaudiSerwamba (A1)** over theft of money from a bank. On **DaudiSerwamba (A1's)** instructions **Keeya Mathew (A6)** gave each of them **US\$ 100** to thank them for visiting him while in custody. **Pw2** later heard **Keeya (A6)** quarrelling with one **Naafi** over money he (**A6**) had given

him to keep and which was now less by **US\$ 10,000**. Keeya Mathew (**A6**) informed them that **Naafi** had disappeared with **US\$ 110,000** belonging to (**A1**) **Daudi Serwamba** and that it was part of **USD 400,000** which **A1** stole from the bank and gave to Keeya Mathew (**A6**) to keep.

On a different day they saw one Kasumba enter **Keeya Mathews (A6)**'s house and come out with a bag which Keeya (**A6**) said contained **100m/=** he gave him to help look for **Naafi**.

One evening in April 2015 **A5 (Shafiq Mubarak)** went home with a big grey bag containing **500,000 US\$ (the amount had been written)**. The money was tied with plastic bands in 10 bundles of 10,000 notes each. **Pw4 (Isaac Moshen)** and **Pw5 (Mutesasira Ali)** shot a video (**exhibit P5k**) of each of them playfully receiving 250,000 US\$. (**A5**) **Shafique** told them that the money belonged to (**A4**) **Kalungi Baker** but that he did not know where he (**A4**) had got it. Later **Baker Kalungi (A4)** picked it and gave **A5 (Shafique)** **US\$ 20,000**. He in turn gave **Pw4 (Isaac Moshen)**, **Pw5 (Mutesasira Ali)** and another, **5,000,000/=** to share among themselves.

On **A5's (Shafique)** instructions, **Pw4 (Isaac Moshem)** identified an **ML Mercedes Benz** for **Baker Kalungi (A4)** and it was bought at 57million/= (**US D 17,000 US\$**).

**Pw16 (Charles Kamuvi)** sold **Mercedes Benz ML 500 Reg. UAX 536A** at **80m/=** to (**A6**) **Keeyawho** the broker (**Kyeyune Besweli**) introduced as a broker for an unidentified buyer.

**Pw6 (Faith Nabisere)**, **Pw7 (Aida Nalwoga Walakira)**, **Pw8 (Gurpreet Singh)**, **Pw9 (Francis Matete)**, **Pw10 (Godwin Twinobusingye)**, **Pw11 (George Partrice Kadimba)**, **Pw12 (Maureen Kashemeire)**, **Pw13 (Stanley Maina)** and **Pw14 (Eric Kibara Nderitu)**, bank officials testified that;

- **A2 (Reagan Okoth)** requested for cash from Oasis branch and insisted on the customers being served there.
- The stated reason (**verbal and written on Exhibits P5b and P5c**) for the big sum of money was that two customers; **Majok** and **Foton** who were to withdraw **USD 500,000** each.
- It was however discovered that Forton did not even have sufficient balances in its account and did not turn up at the bank in two days.

- One of the transactions was created in the system at **13:24:12 hrs** and yet cash was actually picked at **12:56hrs**; meaning that the money left the bank before the account was debited contrary to the bank's Operation Manual (**exhibit P. 6**).
- The transaction amounts were out of range for the Teller, the Cash Officer and the Operations Manager.
- Biometric identification was not conducted.
- 100 dollar bills amounting to USD 800,000 were tied in bundles of 100,000 each, using bigger-than-normal white strapping rolls. The timing of the video (**Exhibit P5k**) (*it was shot two days after the bank lost the money*) and the packaging of the money (*the way banks pack money*) made them believe that it was the one which had been stolen from Oasis branch.

**Pw11 (George Patrice Kadimba), Pw13 (StanelyMaina) and Pw14 (Eric KibaraNdiritu)** testified that,

- The customers' signatures in the transaction documents and the photographs in the passports that were used differed from those on the bank system.
- The Email on which A1 (**Sserwamba David**) based to execute the transactions was not from the bank domain.
- The CCTV footage for the 28<sup>th</sup>/3/2015 and 29<sup>th</sup>/3/2015 shows that none of the suspicious customers went to the Tellers/Cashiers for verification of their identities.

**Pw17 (D/SP KirigaTaban)** conducted searches at **A4 (Kalungi)** and **A7's (Serwamba Isaac)** residences and recovered;

- A black **Mercedes Benz C 300 Reg. No. UAW 496** with one black money purse, US \$ 602 in denominations of 100 (6 notes) and two one dollar bills, UGX 670,000/= (in 10,000 denominations), 115 Dinary (UAE) and a Burundi passport No. OE0037227 in names/photo of **ManirakizaAbubaker**, all marked as (**Exhibit P. 20 (a) – (e)**).
- A Sale agreement in which the purchaser of land/kibanja at KirudduBuziga, Makindye, valued at 100,000,000/= was **ManirakizaAbubakar** (**exhibit P. 15**).

- a cash deposit slip dated 2/4/2015 for 200m/= for Standard Chartered Bank Acacia Makerere Branch Account No. 0101145641700 in names of AbubakerManirakiza (part of **exhibits P. 16 a, b, c and d**),
- one **Ice watch** (**exhibit P. 17**),
- 3 US \$, 10,000 Burundi Francs and 500 Rwandese Francs (**Exhibits P. 19 (a) (b) (C) and (d)**).

**Shafiq Mubarak (A5)** informed **Pw18 (D/IP Byamugisha Emmanuel)** that on 29/3/2015 **KalungiAbubakar alias Manirakiza (A4)** gave him a bag containing a lot of dollars and later picked it and gave him UGX 5m/= which he shared with **Pw3 (Lubega Bernard)**, **Pw4 (Isaac Moshen)** and **Pw5 (Mutesasira Ali)**. Further that **A4 (Kalungi)** bought land at Buziga/Makindye at 100m/= which was deposited into Account No **903 – 0005956179** in the names of Kasekende Nicholas at Stanbic bank Makerere University Branch. The bank statement (**Exhibit P. 27**), reflects the sum of 95m/= deposited by Kalungi on 31<sup>st</sup> /March/2015.

**A4 (Kalungi)** led **Pw18 (D/IP Byamugisha Emmanuel)** to recover vehicle No. **UAT 375Y Mercedes Benz ML** from Prestige garage where it was re-sprayed to white. A Sale Agreement and a certified copy of Prestige garage invoice (**Exhibit P. 28**) for 5,446,880/= (**in the names of Shafiq**) were also recovered.

**Pw18 (D/IP Byamugisha Emmanuel)** retrieved a case file for a case of theft of **110,000 US \$** against **NaafiSenoga** from Central Police Station. The case had been reported on 25/4/2015 by one **Augustine Tumwine** who was with **Keeya Mathew (A6)**. **AugustineTumwine** he could not explain the source of the **US\$ 110,000**.

**A1 (Sserwamba David)** led **Pw 19 (D/SP Emojong Godfrey)** to land he said he purchased in April at KiteziMpererwe at 57m/=-, and informed him that he (**A1**) gave 100m/= to his girlfriend (**Biroli Christine**) who spent 8m/= in clearing and paying taxes for a black Toyota Spacio car Reg. No. **UAW 464 x** and bought 10 acres of land at plot 6 Block 42 KakiriMuguluka LCI, at 120m/= in her mother's names.

**Keeya Mathew (A6)** informed **Pw20 (D/AIP OchanGeoffrey Francis)** that **Serwamba David Musoke (A1)** gave him money which he used to buy motor vehicle No. **UAX 536A Mercedes Benz ML 500 (Exhibit P. 40)**. He led him to recover it from Naguru-go-down.

**Pw22 (S/P SebuwufuErisa)** a Forensic document Examiner compared and analyzed hand-writings, signatures, prints and photographs in documents he was availed and opined that;

- the prints and details in the passport which was used to withdraw the questioned funds (*a copy of the Republic of South Sudan Passport No. RO 00003703 in the names of MabiorAchuangAjangAtem*) don't match with those in the genuine passport No RO00093497 in the bank system.
- there was no evidence that Majok wrote and endorsed with-draw slips **Exhibit P5 (a)** and (**exhibit P5 (i)**) and on a land sale agreement which was attached to those slips.
- Mabior did not write and endorse on with draw slip **Exhibit P5 (b)** dated 29<sup>th</sup> March 2015 for **USD250,000** in the names of **MabiorAchuangAjangAtemA/c No. 2001211267094**, and on a copy of the Republic of South Sudan Passport **No. RO 00003703** in the names of **MabiorAchuangAjangAtem**.
- There is evidence to show that A4(**KalungiAbubaker**) endorsed on;
  - ✚ A land sale agreement (**Exhibit P 15**) between ManirakizaAbubaker and KiwanukaKavuma Hiram Stevens dated 31<sup>st</sup> March 2015,
  - ✚ **Exhibit P 16 (a)**, Agreement between Oncept Ltd and Baker Manirakiza for proposed exclusive residential apartments, and that he (**A4-Kalungi Abubaker**) wrote the entries in;
  - ✚ **Exhibit P5 (a)**, copy of a with draw slip dated 29<sup>th</sup> March 2015 for **USD500,000** from Equity Bank in the names of Cisco Majok, A/c **No. 2001211113233**,
  - ✚ **Exhibit P5 (i)**, copy of a with draw slip dated 28<sup>th</sup> March 2015 for **USD700,000** from Equity Bank in the names of Cisco Majok, A/c **No. 2001211113233**.

A1 (**Sserwamba David**) led **Pw21 (No. 40539 D/CPL Naturinda Patience)** and **Pw23 (ASP Muramira Patrick)** to **Sserwamba Isaac's (A7)** home from where **255m/= (Exhibit P26)**, A1's purported share in the fraud was recovered.

**Mubarak Shafiq (A5)**, after revealing that A4 was the master planner of the fraud led **Pw23** to A4's home. Motor vehicle **UAW 496 L Benz** and some other documents were recovered.

A4 (**Kalungi**) led the police to Prestige Courts garage from where motor vehicle **UAT 375Y Mercedes Benz (Exhibit P. 43)** he said he had bought was recovered.

**Pw24 (Kototyo William Wilber)** run an advert in the New-Vision of 15/12/2015 inviting claimants of the recovered vehicles to claim them but nobody appeared.

In his defence **A1 (Sserwamba David Musoke)** said that **Stanley Maina (Pw13)** called on 27/3/2015 to inform him about two esteemed customers who were to withdraw money at Oasis Branch. On his instructions **Reagan Okoth (A2)** requested for US \$ 800,000 from the cash center. The branch manager (**Nixon Akatujuna**) delegated him (**A1**) to handle all the transactions within his limits for the two days. The clients did not have cheque books but filled in counter leafs.

He maintained that the clients' signatures tallied with those in the system and the photographs in the system were of the persons who were in front of him and that he performed call backs as required. He sent a message to **Kavuma Moses (A3)** the Teller, giving him the account number and names of the customer (**Majok**) and told him to check that account.

**A1** explained that he served the customers from the mantrap because the branch didn't have a co-operate cabin at the time. He took the customers to **Moses Kavuma (A3)** who quickly checked and gave him a thumbs-up. He testified that the accounts in issue were not attached to Biometrics.

His further evidence was that he purchased Motor vehicle **UAV 171X** in 2014 with a car loan and Vehicle No. **UAW 464X** with money from sale of his car **UAS 136M**. The taxes for clearing the car were a loan from Centenary bank. The Mercedes Benz **ML UAX 536A** was purchased by his father Mr. Baker Sserwamba. The **Sumsang phone (exhibit P33)** is not his. **The 255m** was his father's money. The land in **Kitezi-Mpererwe** was purchased on behalf of Allen EthoNankinga by Matovu Daniel.

On his part **A2 (Reagan Okoth)** denied that he insisted on the transaction being handled at Oasis mall. He explained that **Maureen Kashemereirwe (Pw12)** and **David Sserwamba (A1)** instructed him to raise the buffer request in issue and that **A1 (Sserwamba David)** gave him the justification for the request. It was not his (**A2's**) role to establish whether Forton East Africa had money in its account.

His role in all the transactions was to avail money to the Tellers (**Kavuma Moses- USD 700,000 and USD 500,000 and the USD 250,000 to Sarah Kanyago**) who posted the transactions after (**A1**)



David Sserwamba paid the customers. He was not in touch with the customers who made the impugned transactions.

In cross examination he testified that in the *CCTV footage of the 28/3/2015 (Exhibit P2)* which depicts the banking hall, the customer took the **USD 700,000 at 19:05 hours**, and that an entry cannot be posted unless the customer is in the bank, but in this case A1 (**David Sserwamba**) told him to pass the entry around **4.00p.m.**

In the CCTV footage of the back office at **19:34:16hrs** he placed the **(700,000 US\$)** in the mantrap and did not give it to A3 (**Kavuma Moses**). The CCTV footage of **29<sup>th</sup> /3/2015 at 12:56:02 hours** also shows that he did not take the money to A3 (**Kavuma Moses**).

In the footage of 29<sup>th</sup> at 17:47 hours which relates to the **USD 250,000** transaction, from **17:48 hrs to 17:50 hrs** he (**A2**) was in the mantrap. He explained that while in the mantrap he was only confirming the money but not serving customers. At **17:53:37 hrs** he (**A2**) re-entered the mantrap and remained there and at **17:53:43hrs** he went out of the mantrap to the banking hall. He explained that though he is seen getting out of the mantrap with the customers, he was not escorting them.

**A3 (Kavuma Moses)** said that the amounts in issue were above his limit and it was an inter-country payment. A1 (**the Operations Manager**) only instructed him to post them which he did basing on the remarks on the withdraw documents. The payments were done by A1 and A2 conforming to the duo-control policy of Equity bank.

Commenting about A1's evidence, he said that on the **28/3/2015** A1 took the customer to him at around **7.00p.m** and that he (**A1**) lied to the court when he said that he (**A3**) posted the transaction at about **5.00p.m**. He also lied that he sent him (**A3**) a mail checker since there is no mail checker in Equity bank.

**A4 (Baker Kalungi)** said that he owns M/s Ideal Media a multimedia Company and is a lobbyist dealing in investment opportunities in the East African region. He also deals in Real Estate (Land acquisition and selling) and money lending. The **UAW 496L Mercedes Benz** that was found at his apartment belonged to Kaleera Godfrey.

He testified that a Sale Agreement for property he bought in Buziga, an ICE watch and Oncept Architect receipts were recovered from his house. The **95 m/=** he used to buy land in Kirudu-Buziga was got from selling of his otherland.

He has never kept a Silver Mercedes Benz and dollars with Mugisha Joseph (**Pw1**) and didn't purchase vehicle **No UAT 375Y** as Pw4 said.

He has never received any grey bag from **A5 (Shafiq Mubarak)** and did not give him US \$ 500,000 or USD \$20,000 as alleged. He did not take any vehicle to Prestige Garage as **Pw18 (D/IP Byamugisha Emmanuel)** testified. His Media company was doing well so he had the capacity to buy the properties **Pw23 (Partrick Muramira)** alluded to.

**A5 (Shafiq Mubarak)** said that between 27<sup>th</sup> and 28<sup>th</sup> of March he was not in Kampala as exhibit P.30 confirms. The money in the video belonged to one HamisKigundu. He showed **A4 (Baker Kalungi)** a piece of land in Buziga as a broker but does not know how **A4** got the money he used to buy the land. He deposited 200m/= into (**A4**) Baker Kalungi's Account in Standard chartered just because he was in the bank with him at the time and **A4** was too busy to do it. He didn't know where **A4** got the money from.

**Keeya Mathew (A6)** said that on 15/3/2015 he was in Kabong District in Karamoja with **Dw7 (Geoffrey KibuliNkongwe)** and only came back to Kampala on Monday 30/3/2015. He led (**Pw19 Emojong**) to a washing bay where Baker Sserwamba's vehicle **Mercedes Benz No. UAX 536A** was recovered. He is not the one who bought the car. He did not know **A1 (Sserwamba David)** and never had his dollars. He doesn't know Kasumba and he never gave him 100m/= as **Pw3 (Lubega Bernard)** testified.

**A7 (Isaac Sserwamba)** said that on 20<sup>th</sup> /5/2015 **A1 (David Sserwamba)** went with the police to their fathers home. The police found the 255m/= which belonged to their father (**AbubakerSserwamba**) in his (**A7's**) room.

**John Baptist Mujuzi** an examiner of handwriting examined two queried Equity bank withdraw slips, one for **US\$ 700,000** and another for **US\$ 500,000**, and specimen documents, (*a police statement of Kalungi and a request handwriting of Kalungi*, (exhibit **D.25**)). He compared the disputed handwriting and signatures with the specimen writings of **Kalungi**. He found striking

differences in the letter design, letter arrangement and the writing skill, concluding that the writer of the questioned Handwriting and signature in the two withdraw slips is not the person who wrote the specimens (police statement). His report is **Exhibit D.24**.

**Burden and standard of proof.**

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

The issues in counts one, two and three are to be resolved concurrently since the offences were committed in similar transactions.

**Embezzlement of USD 700.000, 500.000 and 250. 000 respectively by A1, 2 and 3).**

**The prosecution has to prove that;**

- The accused were employees of Equity Bank,
- They stole the **USD 500,000, 700,000 and 250,000**, in issue,
- The money was the property of their employer,
- They had access to it by virtue of their offices.

**A1 (Sserwamba David Musoke)** didn't dispute his employment status. He in fact described himself as the Operations Manager of the bank. His employment record which was exhibited as an agreed fact galvanizes the claim that he was an employee of the bank. **This issue is answered in the positive.**

**2. Whether A1 (Sserwamba David) stole the USD 700,000, 500,000, and 250,000 in issue.**

**A1 (Sserwamba David)** admits having instructed **A2 (Reagan Okoth)** to raise the buffer request with the justification that **Majok** and **Forton EastAfrica** were to withdraw the money. He does not dispute the fact that he paid out the monies, but maintains that he followed the right procedures

and paid the right customers. The prosecution maintains that the money was paid to customers who impersonated **Majok** and **Mabior**.

It was common cause that **Forton East Africa** who A1 mentioned as one of the customers who were to withdraw the money did not show up at the bank in two days. No explanation was given for the misleading information that was relayed to the Cash Center. That A1 requested for money for a specified reason and yet proceeded to pay it to a completely different person points to a deliberate move to access it for a fraudulent purpose. The only conclusion is that the mis-information by **A1 (Sserwamba David)** was deliberately aimed at ensuring that the money is sent to Oasis Branch.

Pw13 (**Stanley Maina**) testified that he did not send the Email which A1 claimed was the basis of his actions. He also denied that he rung A1 about the two customers as A1 maintains. I perused the email (**Exhibit P5h**) and noted that it bears originating address [Stanley.maina@equity.co.ke](mailto:Stanley.maina@equity.co.ke). Pw13 testified that his address is [Maina.stanley@Equity bank.Co.ke](mailto:Maina.stanley@Equity bank.Co.ke).

**Other issues Pw13 raised over that Email were that;**

- It was sent on a Saturday March 20<sup>th</sup>, 2015 at 4:31 p.m well after business in South Sudan had closed. The Official working hours on a Saturday in the South Sudan subsidiary is 12.00 noon. He could not have got access to the bank system to draft the E-mail.
- It is only possible to send an E-mail from outside the bank if one had a gadget like a smart phone or an Ipad which is configured to the bank system. None of his gadgets are configured on the bank system.
- if the Email had been sent from such gadgets there would be a comment that “*E-mail sent from Iphone and Ipad*” which is not there.
- The E-mail describes him as a “*Business Development and growth manager*” yet Equity bank and all subsidiaries do not have such a designation. Moreover at the time the E-mail was sent he was “*Senior Business relationship manager*”.
- At the time the E-mail was sent he had even left Juba branch nine months ago.
- The E-mail would have had no disclaimer if he was the one who sent it because a disclaimer only comes if the e-mail is going to or coming from an external source.
- He is the only **Stanley Maina** working with Equity bank South Sudan. His name is number two in the list of staff E-mail addresses (**exhibit P7**).

- The phone number (+**21195000004**) appearing in **Exhibit P. 5 (c)** is not his number. His No. is +**211959000004** and the call log shows that between 27<sup>th</sup> and 30<sup>th</sup> March he didn't communicate with any Ugandan number.

I considered Pw3's (**Stanley Maina**) explanations and note that they are supported by **Pw11 (George PartriceKadimba)**, and that while A1 asserts that the E mail was the basis for his action there is uncontroverted evidence by **Pw11 (George PartriceKadimba)** that he (**A1**) received it on **28/3/2015 at 4:31 pm** and yet the money was requested for in the morning of the **28<sup>th</sup>/3/2015** and delivered around **10:00am**. The E-mail was therefore not the basis of A1's actions. Moreover, I found it strange that A1 didn't put to **Maureen Kashemeire (Pw12)** the fact that she also rung him about the two esteemed customers. The only reason he didn't do so is because he knows that his assertion is false.

**Other relevant evidence was;**

- **Pw14's (Eric KibaraNderitu)** evidence that cheques are the only instruments of payment in Inter-country current account withdraws. The transactions in issue were executed without cheques. Based on the unchallenged explanation by Pw14 that the requirement for the strict use of cheques in such transactions is to provide an added security measure against fraud, I did not believe the explanation that the customers' use of counter-leafs was not irregular. That the accused irregularly accessed the money goes to galvanise the complaint against him.
- I believed the evidence that the two customers were enrolled on the biometric system because as **Pw11 (George PartriceKadimba)** testified, the narrative in **Exhibit P.4 (b)**, that Biometrics was overridden would be irrelevant if the accounts were not attached to the Biometrics system.
- A1 maintains that he took the customers to **Moses Kavuma (A3)** which is outright false. The CCTV footage clearly shows that he instead took them to the mantrap door from where he paid them.
- One of the transactions was created in the system at **13:24:12 hrs** and yet cash was actually picked at **12:56hrs**, meaning the money left the bank before the account was debited contrary to the bank's Operation Manual (**exhibit P. 6**).

**I find the explanations given by Pw11 (Kadimba) and Pw13 (Stanley Maina) credible, and I believed them. I am persuaded, and it is my finding that;**

- **Pw13 (Stanley Maina) did not call A1 and did not send the Email to him, and**
- **the Email did not originate from the bank domain.**

About the identity of the people who withdrew the money **Pw13 (Stanley Maina)** testified that he knows **Cisco Majok** very well since he used to serve him. He is positive that **Cisco Majok** was enrolled on the Biometric system, and that he does not appear in **exhibit P.2, (the CCTV footages for 19:05 hrs, 19:37 hrs and 12:56 hrs).**

**Pw14 (Eric Kibara Nderitu)** also said that the passports which were used in the impugned transactions were not in the bank system, and that the two customer's passports did not bear Immigration stamps, meaning that the genuine Bank customers were not in Uganda at the time the transactions took place.

**Pw22 (S/P Sebuwufu Erisa)** a Forensic document Examiner opined that the prints and details in the passport that was used to withdraw the questioned funds (*-a copy of the Republic of South Sudan Passport No. RO 00003703 in the names of Mabior Achuang Ajang Atem*), don't match with those in the genuine passport No RO00093497 which is in the bank system. This evidence supports **Pw's 13 and 14** evidence.

**Pw22's** evidence that Majok did not write and endorse with-draw slips **Exhibit P5 (a)** and **(exhibit P5 (b))**, and on a land sale agreement dated 27<sup>th</sup> March 2015 which was attached to those slips, also rules out the possibility that **Cisco Majok** was present in the bank on the days and time in issue, or that he withdrew the money.

With regard to count 3, Pw22 further opined that **Mabior** did not write and endorse on with draw slip **Exhibit P5 (b)** dated 29<sup>th</sup> March 2015 for **USD250,000**, relating to **A/c No. 2001211267094**, and on a copy of the Republic of South Sudan Passport **No. RO 00003703** in the names of **Mabior Achuang Ajang Atem**.

On the other hand **A1 (Sserwamba David)** does not deny that he wrote the words "**Aware of the customer being expected**" on **Exhibit P5 (b)** (the with-draw slips for **USD 250,000**). He does not

also deny writing on the same slips that, **“Talked to BGDM-Juba and AppoloNjoroge about the transaction...”**

The **BGDM-Juba** he meant was **Pw13 (Stanley Maina)** who as I have already found never talked to him about the transactions.

**Pw13 (Stanley Maina)**’s evidence that he dealt with Cisco Majok for a long time and knew him well, and that Cisco Majok was not the person who appears in the CCTV footage and who withdrew that money from Cisco Majoks account was supported by that of **Pw14 (Eric Nderitu)** and **Pw22 (Ssebuwufu)**, that the documents which were based on to execute the transactions were not the genuine ones on the bank system, and that the genuine customers were not in the bank on the days in issue.

I note that **Pw13, 14 and 22**’s evidence supports each other in material particulars and they had no reason to give false evidence. I therefore believed them and the fact that A1 deliberately told lies when he wrote on the two withdraw slips that, **“Aware of the customer being expected”** and **“Talked to BGDM-Juba and AppoloNjoroge about the transaction.** He did not call back the customers since the people who were before him were impersonators. Moreover the amounts that were drawn were out of range for his position and to his admission he did not obtain the rights to conduct the transactions. His explanation that the branch manager (**one Nixon Akatujuna**) delegated him to handle all the transactions within the managers Limits for that and the next day, and that the IT Centre told him not to put in a formal request for rights since the manager who had delegated him was there cannot be believed since they are not supported by evidence.

The **CCTV** footage for the two days also shows that A1 was deliberately negligent when he paid the so called customers who were clad in jackets and caps which covered their faces throughout the transactions. For a business that requires strict identification of customers, it is strange that the accused, an Operations Manager served them without requiring them to remove the caps.

It was in evidence that all of the fraudulent customers always first went to A1 who did the running around for the paper work before serving them from the mantrap door. While the accused doesn’t dispute these facts, he maintains that the Co-operate cabin had been broken down during the then on-going renovations. But there was credible evidence (**Pw6, 7, 11, 12**) that the renovations did

not affect the corporate cabin, and that the man trap door was restricted to bank staff. I believed this evidence because those witnesses had no reason to falsely incriminate the accused.

Counsel for A1 submitted that the prosecution's failure to produce Mr. Majok and Mr. Mabior in Court to specifically deny withdrawing the monies is an indication that they in fact withdrew it. **Pw14 (Eric Nderitu Kibara)** however testified that after the customers were compensated they did not have reason to pursue the case, and so they refused to travel to Uganda and instead swore affidavits detailing their side of the story. I believed the explanation. No negative inference should be drawn from the fact that they did not testify.

I note that there were too many infractions on the part of A1 to believe that his actions were mere coincidences or that he acted in ignorance. The fact that he used forged documents to access that money and acted outside his limits for such huge amounts of money lead to only one logical conclusion that the acts were done in pursuance of a criminal purpose, and that he knew that the customers he served were false, but he had personal interest in the funds leaving the bank.

**I find that Cisco Majok and Mabior did not withdraw the money in counts 1, 2 and 3, and that it was withdrawn by fraudsters.**

Theft must be proved in order to sustain a charge of embezzlement. To prove theft, it must be proved that the property in issue was moved/taken away, which is technically referred to as **asportation**.

**Pw23 (ASP Muramira Patrick)** and **Pw21 (No. 40539 D/CPL Naturinda Patience)**'s testimony that **A1 (Sserwamba David)** informed them that he was involved in the fraud and got a share of "about 250m/= " which was with his brother **Sserwamba Isaac (A7)** is instructive since he led them to recover **Ugx 255m/= (Exhibit P26)** from A7. **A1** and **A7 (Isaac Sserwamba)** maintain that the money belongs to their father but I did not believe them.

**S. 122** of the **Evidence Act** permits a court to 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.

It is illogical and I don't believe that the accused could lead the police to recover his fathers' money which had no link to the investigations. Such conduct would defy common human conduct and would be irrational.



**Pw 19 (D/SP Emojong Godfrey)**'s evidence that **A1 (Sserwamba David)** led the police to land he said he purchased at **57m/=** in April at KiteziMpererwe further supports the theft allegation. He could not have led them to land which had no link to the stolen money which was the issue then.

The evidence that he (**A1**) gave 100m/= to his girlfriend (**Biroli Christine**) who spent 8m/= in clearing and paying taxes for a black Toyota Spacio car Reg. **No. UAW 464 x** and bought 10 acres of land at plot 6 Block 42 KakiriMuguluka LCI, at 120m/= as he informed the police is also relevant to the issue of theft.

The defence assailed the evidence of **Pw23 (ASP Muramira Patrick)**, **Pw21 (No. 40539 D/CPL Naturinda Patience)**, and **Pw19 (D/SP Emojong Godfrey)** who said that the evidence they gave was information they got from **A1**. It was argued that their evidence is hearsay.

**S. 62** of the **Evidence Act** provides that oral evidence must be direct and that if it refers to a fact which could be seen, it must be the evidence of a witness who says he or she saw it and if it refers to a fact which could be heard, it must be the evidence of a witness who says he or she heard it.

In this case the three witnesses heard **A1 (Sserwamba David)** say what they testified about. **Their evidence is therefore not hearsay.**

More over their evidence is important in terms of **S. 31 of the Evidence Act** which provides that, **“When any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, is relevant.**

The import of **S.31** was considered in **Mweru Ali and ors v Uganda (cr/appeal no 33 of 2002) [2003] UGSC 29 (21 August 2003)** in which the conviction of the appellant on the basis of information he gave to the police and which led to recovery of a gun was upheld.

**Pw 19 (D/SP Emojong Godfrey)**, **Pw21 (No. 40539 D/CPL Naturinda Patience)** and **Pw23 (ASP Muramira Patrick)**'s evidence links **A1** to the money in ways which show that he was a direct beneficiary of the money. It also proves that the money was moved from the bank to various places in circumstances that amount to theft of it.

Testifying about the money that that appears in the whatsapp video (**exhibit P5k**), **Pw6 (Faith Nabisere)**, **Pw7 (Aida NalwogaWalakira)**, and **Pw11(George PartriceKadimba)**, recalling the size of the material they used in strapping the stolen money and comparing it with the size of the strapping material appearing on the money in the video and the manner in which the money in the video was strapped, were positive that it was the money that was stolen from the bank.

**Pw4 (Isaac Mosheen)** and **Pw5 (Ali Mutesasira)**'s evidence was that the money in the video belonged to **A4 (Kalungi)** and **Pw19's (D/SP Emojong Godfrey)** evidence linked **Kalungi (A4)** to **Sserwamba David (A1)**, and both of them to the fraud. **Pw 19's** evidence taken together with that of **Pw22 (Erisa Ssebuwufu)** leaves no doubt that the money in the video was part of what was stolen from the bank. This evidence is sufficient basis for a finding that the stolen money was moved from the bank by **A1**.

I am convinced by the evidence that **A1** informed the people I have mentioned that he was involved in the fraud. His actions during the fraudulent payments galvanizes my position, and the fact that he led the police to recover properties he bought using part of the stolen money leaves no doubt that he indeed stole all the money in issue.

**I find that there is sufficient evidence that A1 (Sserwamba David) stole the USD 700,000, 500,000, 250,000 in counts 1, 2 and 3.**

**3. Whether the money (USD 700,000, 500,000, 250,000 in counts 1, 2 and 3) was the property of his employer.**

For **A1** it was argued that the money didn't belong to Equity bank since it was withdrawn by the right customers. I have already found that the money was fraudulently withdrawn to the detriment of the bank.

In **Kassim Mpanga Vs Uganda Criminal Case 90 of 1994**, the **Oxford and Blacks Law Dictionary** all define the term "loss" as a detriment or disadvantage resulting from deprivation.

There is uncontroverted evidence by **Pw14 (Eric Kibara Nderitu)** that the bank refunded the money to the customers, meaning that it took up or owned the loss. **I find that the money belonged to the bank.**

**4. Whether he had access to it by virtue of his office.**

It was argued for A1 that the Prosecution failed to prove that he got access to the money by virtue of his office. There is evidence however that the A1 was the Branch Operations Manager and that he is the one who instructed A2 (**Okoth Reagan**) to request for part of the money from the cash centre. It is common-cause that he is the one who paid out the money, and that he did all that as the branch Operations Manager. **I find that he accessed the money by virtue of his office.**

In conclusion, on the evidence that **A1 (Sserwamba David)** instructed **A2 (Reagan Okoth)** to request for an unusually huge sum of money, and deliberately gave a false justification for it, that one of the persons to whom he paid it had not been mentioned as a beneficiary to the money, that he paid it out to people dressed in suspicious clothing who he did not even try to identify and on the basis of false documents which he based on to pay, further on the evidence that he led the police to recover part of the stolen money and showed them land and a vehicle on which part of the money was spent, there is sufficient evidence to ground the charge of embezzlement.

**In agreement with the ladies and gentleman assessor, i find that A1 (Sserwamba David Musoke) embezzled the USD 700,000, 500,000 and 250,000 as charged in counts 1, 2, and 3. I convict him as charged on each of those counts. I dismiss all the alternative counts of Causing Financial loss as far as he is concerned.**

#### **A2 (Reagan Okoth)**

The defence did not dispute A2's employment status. I find that he was an employee of Equity Bank.

**Whether A2 (Reagan Okoth) stole the USD 500,000, 700,000 and 250,000.**

The state evidence against A2 is that;

- he raised the buffer request and insisted on the customers being served at Oasis branch against **Pw6's** advice.
- He told **Pw6 and Pw 7** that each of Majok and Forton were to withdraw USD 500,000 yet Forton did not have sufficient balances as was later discovered and did not even show up at the bank in two days.
- The money was instead withdrawn by persons who impersonated Majok and Mabior.

- In the CCTV footage (**exhibit P2**) A2 is seen taking the money to the customers in the mantrap, a door restricted to only bank staff.

**In his defence he explained that;**

- It was his role as a cash officer to raise buffer requests.
- A1 (**Serwamba David**) is the one who gave him the justification for the money, and it was not his role to establish whether Forton East Africa had sufficient funds in its account.
- He didn't insist on the transaction being handled at Oasis mall.
- On the instructions of **A1 (Sserwamba David)** he availed the 700,000 US\$ and the USD 500,000 to (**A3-Kavuma Moses**) the Bulk Teller and the USD 250,000 to Sarah Kanyago another Teller, and it was paid to the customers by A1 (**Sserwamba David**) in his absence.
- His role in all the transactions was to avail money to the Tellers who posted the transactions after **A1 (David Sserwamba)** paid it out.
- He took the money to the man trap door because the corporate section and branch manager's office had been broken down.
- He was not in touch with the customers on the days in issue. He sits at the back office and doesn't interface with customers in his day to day duties.

I have given an anxious consideration to all the evidence in this regard and formed the view that it does not sufficiently prove the element of theft of the money by A2 (**Reagan Okoth**). In agreement with the Ladies and Gentleman assessors I acquit him on all three counts of embezzlement, and go on to consider whether the evidence proves the alternative charges of causing financial loss in counts 1 to 3.

**The ingredients are;**

- **Whether he was an employee of Equity bank,**
- **Whether in the performance of his duties he did any act,**
- **Whether he knew or had reason to believe that the act or omission will cause financial loss to the bank.**

The issue of A2's employment status has already been found to have been uncontested and therefore sufficiently proved.

**Whether in the performance of his duties he did any act.**

The prosecution submitted that **A2 (Reagan Okoth)** breached the Bank procedures as set out in the Bank's operations manual (**exhibit P6**).

For A2 it was submitted that;

- **Pw6 (Faith Nabisere), Pw7 (Aida NalwogaWalakira), Pw11 (George PartriceKadimba), Pw12 (Maureen Kashemeire), Pw14 (Eric Nderitu) and Pw18 (D/IP Byamugisha Emmanuel)**'s evidence does not prove the offence of causing financial loss.
- That **A1 (David Sserwamba)** in his defense discredits the prosecution evidence against A2 since he admits that he is solely liable for the transactions.
- A1 was in a supervisory position to A2 so he could instruct him and A2 was under a duty to follow instructions.
- A2 followed the bank policies when he prepared the buffer request.
- A2 doesn't interface with customers since he sits in the back office and it is not his duty to identify or verify customers.
- Since the branch was being remodeled there was justification for A2's paying the customer from the mantrap door.

I note that A2 raised the buffer request as he was obliged to do. The only issues relate to whether he did so with an ill motive.

**The questions of fact that need to be resolved are;**

- whether he indeed insisted on the customers being served at Oasis branch against **Pw6's** advice,
- whether he told **Pw6** and **7** that each of Majok and Forton were to withdraw USD 500,000.

**Pw6 (Faith Nabisere)** and **7 (Aida NalwogaWalakira)** who testified that A2 insisted on the customers being served at Oasis Mall branch had no reason to give false evidence against him.

They testified in a steadfast manner without prevarication and convinced me to have been witnesses of truth. I believed them.

While A2 doesn't deny having informed them that Forton was one of the customers who needed the money, he maintains that he got that information from A1 (**Sserwamba David**), and argued that it was not his role to establish customers' bank balances.

Be that as it may, I find the fact that Forton did not have sufficient balances and did not even show up at the bank relevant in the circumstances of this case. The circumstances are that A2 who had relayed the justification to the Cash Center also participated in the payment by way of getting the money from the vault.

He could only do this with reference to the transaction documents which bore the amounts and the names of the customers to be paid. A2 had informed Pw6 and 7 that Majok was to withdraw only **USD 500,000** yet the person who impersonated Majok actually withdrew a total of **USD 1, 250,000**. Forton's name was not in the transaction documents A2 based on to get money from the vault. This means that he acted on documents which contradicted his initial position. For the huge amounts involved in the transactions, the contradictions should have been red flags to any reasonable and honest banker. I don't believe, and it is my finding that the accused did not act on the documents out of ignorance. His actions were done in pursuance of a criminal purpose.

Secondly he claimed that it was not his role to interface with customers, and at one stage in his evidence he denied having done so. The CCTV footage (**exhibit P2**) however shows that he in fact interfaced with these particular ones and for a long time. That he did so when he was not obliged to shows that he had more than a banker/customer relationship with them.

The way these particular customers were dressed, with caps on their heads covering their faces and in jackets, an indication that they deliberately sought to hide their identities, was another red flag to a reasonable and honest banker. That A2 nonetheless went ahead and served them points to his knowledge of the criminal circumstances under which they were with-drawing the money.

Though he testified that he took the money to the Tellers, the CCTV footage shows that he in fact took it to the man trap from where the customers were paid. He was anxious to demonstrate that he did not participate in paying them but the CCTV footage shows that he indeed participated in

paying them from the man trap. I have already found that the customers were not supposed to be paid from the mantrap door yet he did so.

All in all, that Forton who was named in the buffer request as one of the customers who were to take the money did not have sufficient balances in its account at the time and did not even show up at the bank in two days, that bigger amounts of money than initially indicated were paid to persons who impersonated Majok and Mabior and from the mantrap door which was restricted to only bank staff, I find that there is evidence that A2 knew that the money was being fraudulently withdrawn.

There is evidence that the customers he paid were dressed in a suspicious way yet A2 didn't bother to establish their identities. I have already found that though the accounts were attached to the Biometric system, Biometric Identification was not done yet it is in evidence that A2 had access to the system. **These are all acts committed by A2 (Okoth Reagan) to promote a criminal purpose and I so find.**

**Whether he knew or had reason to believe that the act or omission will cause financial loss to the bank.**

For the prosecution it was submitted that A2 had reason to believe that his actions would cause financial loss to the Bank and that the Bank indeed suffered loss since it was forced to compensate Mabior and Majok, the genuine account holders.

I should point out that any reasonable and honest banker knows that telling lies to fellow Bankers, filing false documents, failing to follow Bank protocol relating to where to serve customers from, and paying of suspicious customers without establishing their identities is bound to cause financial loss to a bank. In this case Pw14's (**Eric KibaraNderitu**) evidence was that the bank indeed lost money since it had to refund the money to the genuine customers.

I find this ingredient sufficiently proved, and with it, the offences of causing financial loss as charged in the alternative counts 1 to 3. **In agreement with the Ladies and Gentleman assessors i find A2 guilty on each of those three alternative counts.**

### **A3 (Moses Kavuma)**

The evidence against **A3 (Kavuma)** was basically that he posted the impugned transactions and that he breached the Bank procedures (**in the Bank's operations manual, exhibit P 6**), which actions he knew or had reason to believe would cause financial loss to the Bank.

**A3's (Kavuma Moses)** evidence was that on each of the 28<sup>th</sup> and 29<sup>th</sup> march 2015 **A1 (David Sserwamba)** went to his counter with a man he introduced as Majok, a VIP client who wanted to withdraw **700,000 US \$** and later **USD 500,000**. The man was clad in a black coat, white shirt and a polo cap. Since the amounts were above his limit and it was an inter-country payment he referred the transactions to **A1 (the Operations Manager)**.

The only role he played was to post the transactions as instructed by **A1**, and he did so on the basis of the remarks on the withdraw documents that call backs had been done. The Payments were done by **A1** and **A2** conforming to the duo-control policy of Equity bank.

About the events of the **28/3/2015**, **A1** took the customer to him at around **7.00p.m.** **A1** lied when he said that he (**A3**) posted the transaction at about **5.00p.m.** **A1** further lied that he sent **A3** a mail checker. There is no mail checker in Equity bank. **A1** also lied that he gave **A3** the names of the customers and their Account numbers to check that the account belonged to the customer.

He couldn't identify the customers with biometrics and could not override this control and yet the transactions were above his limit, so he procedurally referred them to **A1** his superior. All the instruments he posted were verified, witnessed, signed and authorized by **A1 (Sserwamba David, the operations manager)**. He pointed to the fact that **exhibit P2 (the CCTV footage)** shows that payment was not done by him.

I have given a very careful consideration to all evidence in this regard and note that **A3** indeed does not appear in the CCTV footage as having paid the suspicious customers. **A2 (Reagan Okoth's)** evidence that he took the money to **A3** was not supported by the CCTV recordings and it was a lie. **A3** appeared to me to have been a witness of truth as far as his role in the impugned transactions was concerned. The prosecution maintains that he failed in his role of identifying the customers. He owns up to that.



My view, fortified by the abundant evidence on the record, was that there was no moral failure on **A3's** part. There is no evidence of deliberate acts and/or omissions aimed at stealing or aiding and abetting the fraud. His failure to identify the customers must be viewed in the light of the facts surrounding the transaction which are that his supervisor (**A1**) personally took the customers to him and explained that they were premium customers. A3 was bound to be misled as he was, into trusting A1's word as seems to have been the case. I believed him and find that he did not commit any the offences in counts 1, 2 and 3. **In agreement with the Ladies and Gentleman assessor i acquit him on each on those counts and the alternative charges.**

#### **Count 4**

##### **Money Laundering c/s 116 (c) & 136 (1) (a) AMLA.**

The particulars are that **A4 (Kalungi Abubaker)** on the 29<sup>th</sup> March 2015 in Kampala District had in his possession **USD 500,000** knowing or having reason to believe at the time of receipt that the said money was proceeds of crime.

**The prosecution had to prove that;**

- **Kalungi(A4) possessed USD 500,000,**
- **he had reason to believe at the time of receipt that the money was proceeds of crime.**

The prosecution sought to rely on the evidence of **Pw4 (Isaac Moshen)** and **Pw5 (Mutesasira Ali)** that **A5 (Shafiq Mubarak)** went home with a big grey bag containing **500.000 US\$** which he said belonged to (**A4**) **Kalungi Baker**, and that **Baker Kalungi (A4)** later picked the money.

That evidence was corroborated in material particulars by that of **Pw19 (D/SP Emojong Godfrey)** whom **A4 (Kalungi)** informed that on **28<sup>th</sup> and 29<sup>th</sup> March 2015** **A1 (Sserwamba David)** gave him **USD 500.000** to keep, and that he in turn gave the money to **A5 (Shafiq Mubarak)**, awaiting further instructions from **A1 (Sserwamba David)**. Further evidence was that **A1 (Sserwamba David)** later picked the money and gave **A4 (Kalungi)** **USD 10,000**, but later gave him **USD 260,000** more, and that **A4 (Kalungi)** also gave **USD 30,000** to **A5 (Shafiq Mubarak)**.

The above evidence was supported by that of **Pw18 (D/IP Byamugisha Emmanuel)** that **Shafiq Mubarak (A5)** informed him that on **29/3/2015** **Kalungi Abubakar alias Manirakiza (A4)** gave

him a bag containing a lot of dollars, and that Kalungi later picked the bag and gave him **UGX 5m/=** which he shared with Ali Mutesasira, Moshen and Kazibwe.

I have already commented on the issue of admissibility of that evidence and held that it is in line with the provisions of **Section 62(1)** of the **Evidence Act** and therefore not hearsay.

I note that the information given to the various witnesses by the accused at different stages differed in so far as the amounts of money given to **A4 (Kalungi)** by **A1 (Sserwamba David)** and to **A5 (Shafiq Mubarak)** by **A4 (Kalungi)** was concerned, but the common thread running through the evidence is that there were suspicious money related dealings between the accused persons on or about the **29<sup>th</sup> March 2015**, the time when the fraud occurred.

Other relevant evidence is of **Pw22 (S/P Erisa Ssebuwufu)**, the hand writing expert who after examining the entries in vouchers **Exhibit P5 (a)** and **Exhibit P5 (b)** that were used to withdraw **USD700.000** on the **28<sup>th</sup> March 2015** and the **USD500.000** on the **29<sup>th</sup> March 2015**, opined that there was evidence to show that **A4 (Kalungi Abubaker)** made entries in them.

**Pw1's (Mugisha Joseph)** evidence that **(A4)** was very excited over the huge sum of money he had got, and that he paid the **15m/=** he owed him and even advanced him a loan of **USD 10.000** claiming that he had a sugar deal with some Sudanese, is relevant as well. **A4 (Kalungi)** even confided in him that he had bought land in Buziga and purchased a house for his mother, before asking him to keep his **Silver Mercedes Benz ML 4-matic** and **USD 200.000**.

**A4 (Baker Kalungi)** denied that he gave **A5 (Shafiq Mubarak)** a grey bag containing **US \$ 500.000** or that he later got it from him. He denied that he gave **A5 (Shafiq Mubarak)** **USD \$20.000**. He adduced the evidence of **John Baptist Mujuzi** an examiner of handwriting who examined the two queried Equity bank withdraw slips (**exhibits P5 (a)** and **P5 (b)**) one for **US\$ 700.000** and the other for **US\$ 500.000** and ruled out the possibility that **A4 (Kalungi)** made the queried entries in them.

For **A4** it was submitted that the prosecution failed to prove that the **USD 500.000** he is alleged to have been in possession of was legal tender. I found that submission misconceived since there is no indication that the money might have been fake. The prosecution didn't have to prove facts that were not in issue.

It was further submitted that the **USD 500.000** was never listed among the items recovered from A4's residence. The answer is that since there is no indication that it was recovered from there it did not have to be listed among those exhibits.

About the Hand writing examiners' conflicting reports, **Kooky Sharma Versus Uganda Criminal Appeal No. 44/2000**, establishes the principle that where two or more expert witnesses give evidence for opposing sides, the judge should convict if satisfied beyond reasonable doubt that he/she should accept the expert evidence adduced by the prosecution and reject that evidence adduced by the accused if the latter opinion evidence is not correct.

I carefully considered that opinions of the two experts and the process through which they came to their conclusions and I make the following observations;

- unlike **Pw22 (S/P Erisa Ssebuwufu)** the defence witness **Mr John Baptist Mujuzi** worked with photocopies of the questioned withdraw slips. I looked at the photocopies that he used and my view is that they were of very poor quality which must have compromised the result of his examination.
- unlike the prosecution witness who used only **non-request** specimen writings and signatures of the accused, the only original specimen documents **Mr John Baptist Mujuzi** used were supplied by the accused for the specific purpose of the examination. The possibility of deliberate manipulation of his hand writing and signature to achieve a specific result cannot be ruled out.
- unlike **Pw22** who was not directly paid by anyone to do his work **Mr John Baptist Mujuzi** was paid by the defence. The possibility and tendency to biased opinion cannot be ruled out.

For the above reasons I disbelieved **Mr John Baptist Mujuzi's** opinion. I believed that of **Pw22 (S/p Erisa Ssebuwufu)** which is that there is evidence that **A4 (Kalungi Abubaker)** made the entries in the withdraw slips relating to USD 700.000, and USD 500.000. **Pw22's** evidence is lent credence by that of **Pw4 (Isaac Moshen)** and **Pw5 (Mutesasira Ali)** that **A5 (Shafiq Mubarak)** had **500.000 US\$** which he said belonged to **(A4) Kalungi Baker**. The video (**exhibit P5k**) of them with the money evidences its existence at the time. They maintained that **A4 (Baker Kalungi (A4))** later picked the money.

**Pw6 (Faith Nabisere), Pw7 (Aida Nalwoga Walakira) and Pw11 (George Partrice Kadimba)**’s opinions based on the manner and the materials used in strapping it, that it was part of the money that was stolen from the bank are also relevant. The evidence of the people to whom A4 mentioned that he possessed the money, was supported by that of those who saw him with it, leaving no doubt in my mind that he had the money.

I should make the point that **Money Laundering** is an offence against “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 **S. 1 of the AMLA**).

The fact that the information from the accused to the various witnesses kept changing must be seen in this light. What is important is that A4 was seen with **USD 500.000** by **Pw4 (Isaac Moshen)** and **Pw5 (Mutesasira Ali)**.

There can be no reason for witnesses like **Pw4 (Isaac Moshen)** and **Pw5 (Mutesasira Ali)** giving false evidence against him. I believed their account of events, and with it, the fact that he possessed the **USD 500.000**. **I find that the first ingredient was sufficiently proved.**

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

**S. 4 of the AMLA provides that;**

**“Knowledge, intent or purpose required as an element of the crime of Money laundering... may be inferred from objective factual circumstances”.**

The fact that **A4** possessed that big amount of money under circumstances that;

- at around that time **USD 1,450,000** had been fraudulently withdrawn from Equity Bank, and,
- he informed **Pw1 (Mugisha Joseph)** that he had a sugar deal with some Sudanese, but there was no such deal (**there is no evidence of it on record**),
- he doesn’t give an account of how he came by the **USD 500.000** which he has been proved to have possessed,
- **Pw22**’s evidence that he (**A4**) made the entries in the withdraw slips points to the fact that he fraudulently withdrew the money from Equity Bank,

- evidence that he had dealings with A1 on the days in issue supports Pw22's opinion, are **objective factual circumstances** which persuaded me that **he had reason** to believe at the time of receipt that it was proceeds of crime.

The accused's assertion that he has businesses from which he could make big amounts of money is not supported by evidence. Since he has been proved to have actually possessed it, and in view of the above factors, **I agree with the ladies and gentleman Assessor that there is sufficient evidence to sustain a conviction. I convict A4 as charged in count 4.**

### **Count 5**

#### **Money Laundering c/s 116 (c) & 136 (1) (a) AMLA.**

It was alleged that **Shafiq Mubarak** on the 29<sup>th</sup> March 2015 in Kampala District had in his possession **USD 500.000** which he received from **Kalungi Abubaker** knowing or having reason to believe at the time of receipt that the said money was proceeds of crime.

#### **Whether A5 (Shafiq Mubarak) possessed USD 500,000.**

The prosecution relied on **Pw18's (D/IP Byamugisha Emmanuel)** evidence, supported in material particulars by **Pw4 (Isaac Moshen)** and **Pw5 (Mutesasira Ali)** which I laid out above.

**A5 (Shafiq Mubarak)** denying the allegation, said that between 27<sup>th</sup> and 28<sup>th</sup> of March he was not in Kampala as **exhibit P.30 (Receipts from Para safari Lodge)** confirm. Further that the money in the video belonged to one **Hamis Kigundu**.

The defence pointed to the contradictions between **Pw4's (Isaac Moshen)** police statement and his sworn evidence and the fact that **A5** does not appear in the video (**exhibit P5 (k)**) in which those who had the money appeared.

**Pw4 (Isaac Moshen)** satisfactorily explained the contradictions in his statements. I believed his explanation. That **A5** does not appear in the video does not necessarily contradict the state evidence

that he possessed the money. His non-appearance in the video and his possession of the money are not mutually exclusive.

The Alibi that A5 raises was disproved by **Pw4 (Isaac Moshen)** and **Pw5 (Ali Mutesasira)** who were with him at his home and saw him with the money. I believed them to have been witnesses of truth since they had no reason to falsify incriminate him. The burden on the prosecution to place him at the scene was discharged.

It was also submitted that there was no evidence that the money was stolen from Equity bank since Majok did not give evidence, and yet he deposited a similar amount of money on his account soon after the fraud.

The failure by Majok to testify was explained by **Pw14 (Eric Kibara Nderitu)** whose evidence that money was indeed stolen from the two accounts I believed. The absence of Majok's evidence doesn't therefore water down the complaint that money was stolen from his account.

Given **Pw18's (D/IP Byamugisha Emmanuel)** evidence as supported by that of **Pw4 (Isaac Moshen)** and **Pw5 (Mutesasira Ali)** who saw A5 (**Shafiq Mubarak**) with the **US\$ 500,000**, I reject this denial and **find that he possessed the USD 500,000** on the day in issue.

**Whether he (Shafiq Mubarak) had reason to believe at the time of receipt that the money was proceeds of crime.**

Under **S. 4 of the AMLA** the “**knowledge, intent and purpose**” required as an element of the crime of Money laundering may be inferred from **objective factual circumstances**.

It is in evidence that he (A5) told **Pw4 (Isaac Moshen)** and **Pw5 (Mutesasira Ali)** that **he did not know where A4 got the money**. The defence submitted that had A5 known that the money was proceeds of crime he would never have shared the whatsapp video with other people. I however find that submission presumptive since it is not backed by evidence.

**I found the following evidence instructive;**

- The sum of **USD 500.000** is huge by any standard. There is no evidence that A4 explained to A5 how he came by it. In terms of S. 122 of the Evidence Act which 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, is relevant in determining the issue at hand.**

That A5 accepted to keep the money attracts an adverse finding that he knew of its origin since **the common course of human conduct and public and private business** is such that one would find out the source of such a huge sum of money before accepting to keep it.

- the evidence that when **A4 (Baker Kalungi)** picked the **USD 500.000** from A5, he gave him **US\$ 20.000**, quite a big sum of money. It is unusual for people to give away big amounts of hard earned cash for no reason. A5 only denied that it happened. Since there is evidence that it indeed happened, there ought to have been a reason to justify the donation, but there is none. This is another reason for imputing ill-knowledge against A5.
- On **A5's (Shafique)** instructions, **Pw4 (Isaac Moshen)** identified an ML Mercedes Benz which Baker Kalungi (**A4**) purchased at **57million/= (USD 17,000 US\$)**. This evidence evidences the close dealings between A4 and 5.
- Pw18 recovered a sales agreement and a certified copy of an invoice (**Exhibit P. 28** with a5,446,880/= value (**in the names of Shafiq**) and motor vehicle **UAT 375Y Mercedes Benz ML** belonging to **A4** from Prestige garage. A5 explained that the invoice was made in his names only because he was the one who was known at the garage. While I accept the explanation, the fact that an invoice for works contracted by another person is issued in the names of another is not only an indicator of the close relationship between them but also that there was something to hide.
- Most important is the evidence that **A5 (Mubarak Shafiq)** told **Pw23 (ASP Muramira Patrick)** that **Kalungi Abubaker (A4)** was the master planner of the fraud. The evidence is that A5 led **Pw23** to A4's home from where Motor vehicle **UAW 496 L Benz** and some other documents were recovered.

A5 did not specifically deny that he told **Pw23** that A4 was the **master planner of the fraud** and I found that instructive. I believed **Pw23's** evidence considering the fact that he indeed went to A4's home (**A4 doesn't contest this**) and recovered a vehicle which the accused(**A4**)says belonged to his friend

The fact that A5 knew about the fraud, taken together with the above factors, and the evidence of the close relationship between him and A4 are **objective factual circumstances** which leave no doubt in my mind that he (**A5-Shafiq Mubarak**) **had reason to believe** at the time of receipt that the money was proceeds of crime.

**I so find and in agreement with the Ladies and Gentleman Assessor accordingly convict A5 (Shafiq Mubarak) as charged in count 5.**

#### **Count 6**

##### **Money Laundering c/s 116 (a) & 136 (1) (a) AMLA.**

**KalungiAbubaker** on the 31<sup>st</sup> of March 2015 in the Kampala District, for purposes of disguising or concealing the illicit origin of money in the sum of **UGX 100,000,000** converted the said money by purchasing land at **Kiruddu-Buziga, Makindye Division Kampala District** knowing or having reason to believe that the said money was proceeds of crime.

- **Whether KalungiAbubaker for purposes of concealing the illicit origin of Ugx 100,000,000/= converted the money by purchasing Land at Kiruddu-Buziga, Makindye Division Kampala District.**

**Money Laundering** is defined under **S. 1 of the AMLA** as **the process of turning illegitimately obtained property into seemingly legitimate property**, and **S. 4 of the AMLA** provides that the **“purpose, intent and knowledge”** required as an element of the crime of Money laundering may be inferred from **objective factual circumstances**.

The fact that A4 bought the land is not disputed. At the trial he only maintained that the (**95 m/=**) he used to buy the land was money got from sell of land that was not connected to the case. **Pw1 (Joseph Mugisha)** and **Pw19 (D/SP Emojong Godfrey)**'s testimonies that the accused



informed them that he had bought land in Buziga and **Pw17 (TabanKiriga)**'s evidence that he recovered a sale agreement relating to the land is therefore accepted as undisputed.

The issue at this stage relates to the source of the money he used to buy the land. The fact that he purchased that land on 31<sup>st</sup> March 2015 (**sale agreement (exhibit P15)**) just a day after the fraud in which he has been proved to have participated and financially benefitted persuades me that the **95,000,000/=** was part of what was stolen from Equity Bank. (**There is evidence that part of the stolen money was taken in Uganda Shillings**).

**Whether by buying the land he “converted the money” as per state complaint.**

I have found that he used money that he stole from the bank to buy the land. In terms of **S.1 of the AMLA**, the purchase process amounted to “**turning illegitimately obtained property (the money) into seemingly legitimate property”- (the land)**, which is synonymous to **converting the money into land**. I so find.

**Whether when he bought the land, the accused's intention was to conceal the illicit origin of the money.**

The accused's intention of buying the land using money from an illicit origin, construed from **objective factual circumstances** which are;

- The timing of the purchase and the dispatch with which he acted in buying the land (**the purchase was only a day after the fraud**) can only be adversely interpreted to mean that he intended to conceal the illicit origin of the money.

The above factors are strong and valid bases for an adverse finding as I do, that A4 converted/turned the money into land with the intention of **concealing the illicit nature** of the money.

**Whether he had reason to believe that the money was proceeds of crime.**

**Pw19 (Emojong)** testified that A4 told him about how the money was got, which account is corroborated in the accounts of **Pw4 (Moshen)** and **Pw5 (Ali Mutesasira)**. The fact that the

properties he told him he had bought were recovered following his lead is relevant, and most important is the finding I made that A4 fraudulently with-drew the money from Equity Bank. **There is no doubt that he had reason to believe that the money was proceeds of crime.**

Counsel Kabega raised objections over the indictment arguing that it is **duplex** since the accused was charged with the offences of **concealing or disguising** and the offender must be proved to either have had the **knowledge or had reason to believe** that the money was proceeds of crime. The Law he cited for the submission,

**S. 25 of the Trial on Indictments Act** provides that;

**(b) the statement of offence shall describe the offence shortly in ordinary language, avoiding as far as possible the use of technical terms and without necessarily stating all the essential elements of the offence, and it shall contain a reference to the section of the enactment creating the offence;**

**(c) after the statement of the offence, particulars of that offence shall be set out in ordinary language, in which the use of technical terms shall not be necessary; but where any written law limits the particulars of an offence which are required to be given in an indictment, nothing in this paragraph shall require any more particulars to be given than those so required;**

The important point in the above Law is for the Indictment to give reasonable information to an accused as to the nature of the offence charged. Moreover Section 50 (1) T.I.A provides that **“every objection to an indictment for any formal defect on the face of the indictment shall be taken immediately after the indictment has been read over to the accused person.”**

Counsel should have moved to have the indictment quashed at the time of plea taking or soon thereafter. The courts have disapproved of the defense postponing the application to quash indictments for purely tactical reasons.

Moreover duplicity per se may, but not necessarily, lead to a charge or conviction being quashed. The test should be whether the defect has occasioned a miscarriage of justice.

A miscarriage of justice is deemed to have occurred where by reason of a mistake, omission or irregularity in the trial, the appellant lost a chance of acquittal which was fairly open to him (**Archibold, 38<sup>th</sup> edition, Para 925**). A charge should not be quashed upon a mere technicality that has caused no embarrassment or prejudice to the accused.

From the submissions provided by counsel for A4, it cannot be said that his client suffered any embarrassment or prejudice nor can it be said that the defects complained of occasioned him any miscarriage of justice during the trial. Had that been the case, the objection would have been raised well in time to stop the injustice from continuing as the accused and his counsel watched.

The particulars of offence gave sufficient information which disclosed the charges the accused was facing. That is why he was able to participate in the proceedings and defended himself. The submission has no merit.

He was charged with converting 100m/= by purchasing land but the evidence is that it was **95m/=**. The difference in the laundered amounts does not however prejudice the accused since he had a fair understanding of the prosecution complaint against him.

**I find that the prosecution has proved the charge of Money laundering of 95m/= in count 6. In agreement with the Ladies and Gentleman Assessors I convict him of converting 95m/= by purchasing land on count 6.**

#### **Count 7**

##### **Money Laundering c/s 116 (a) & 136 (1) (a) AMLA.**

The particulars are that **Kalungi Abubaker** on the 31<sup>st</sup> of March 2015 in the Kampala District, for purposes of disguising or concealing the illicit origin of money in the sum of **USD 25,000** converted it by purchasing a **Mercedes Benz ML UAT 375Y** knowing or having reason to believe that the said money was proceeds of crime.

**Whether Kalungi Abubaker for purposes of disguising or concealing the illicit origin of USD 25,000 converted it by purchasing a Mercedes Benz ML UAT 375Y.**

The prosecution evidence was that of **Pw4 (Isaac Moshen)** that on **A5's (Shafiq Mubarak)** request he identified Motor Vehicle **UAT 375Y** for purchase by **A4 (Kalungi Baker)** who bought it at **USD 17,000 (equivalent of UGX 57,000,000/=)**.

In **A4 (Kalungi)**'s interaction with **Pw 19 (D/SP Emojong Godfrey)** the details of which have already been talked about, he revealed that he purchased a **Mercedes Benz UAT 375 y ML 350** station wagon which he took to Industrial area to change colour from silver grey to white, and led **Pw21 (No. 40539 D/CPL Naturinda Patience)** and **Pw23 (ASP Muramira Patrick)** to Prestige Courts garage where he (**A4**) talked to the garage owner who gave him the vehicle keys.

The vehicle, a Sale Agreement and a certified copy of Prestige garage invoice (**Exhibit P. 28**) for 5,446,880/= (**in the names of Shafiq**) were recovered from the garage.

At the hearing **A4 (Kalungi Abubaker)** denied that he purchased the vehicle or that he took it to Prestige Garage. I did not believe him. I note that **Pw4 (Isaac Moshen)**'s evidence was lent credence by the evidence that **A4** led the police to the garage from where the vehicle was recovered. I have no doubt that he (**A4**) indeed purchased it under the circumstances **Pw4 (Moshen)** testified to.

#### **Whether he converted stolen money by purchasing the vehicle.**

**Money Laundering** is an offence against “**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 S. 1 of the AMLA).

The first question is whether he used money from an illicit origin. The fact that the purchase took place soon after the fraud in which A4 was involved and financially benefitted leaves no doubt that he used money from an illicit origin to buy the vehicle. I find that the accused purchased the vehicle through a process in which stolen money was used, and that the purchase process amounted to **turning illegitimately obtained property (the money) into seemingly legitimate property (the vehicle)**, which is synonymous to converting the money into a vehicle.

I note that he was charged with laundering **USD 25.000** and yet the evidence is that the vehicle cost him **USD 17.000 (UGX 57.000.000)**. The fact that he was charged for a bigger amount of money did not prejudice him since he had a fair knowledge of the nature of the allegations.

#### **On whether the purpose was to disguise the money's illicit origin;**

- the timing of the purchase ( it was purchased on **30/3/2015** the day following the fraud),

- the fact that the Sale Agreement was instead made in **Pw4 (Isaac Moshen)**'s name, and,
- the fact that A4 had the vehicle re-sprayed from silver to white, are **objective factual circumstances** which leave no doubt in my mind that he had the intention to disguise illicit origin of the money.

**Whether he had reason to believe that the money was proceeds of crime.**

I find that **Pw19 (Emojong)**'s evidence and fact that he (**A4**) fraudulently with-drew the money from Equity Bank coupled with the mode of purchase of the vehicle (**as per Pw4's account**) for such a huge amount of money are strong ground for a finding that he **had reason to believe** that it was proceeds of crime.

**I find that the prosecution has proved the charge of Money laundering of USD 17,000 (Ugx 57M/=) against A4 in count 7, and in agreement with the Ladies and Gentleman Assessor, I convict him with laundering of USD 17,000 (Ugx 57M/=).**

### **Count 8**

#### **Money Laundering c/s 116 (a) & 136 (1) (a) AMLA.**

The particulars are that **Kalungi Abubaker** on the 4th of April 2015 in the Kampala District for purposes of disguising or concealing the illicit origin of money in the sum of **USD 200,000** transmitted the said money to **Mugisha Joseph** knowing or having reason to believe that the said money was proceeds of crime.

**Whether Kalungi Abubaker transmitted the USD 200,000 to Mugisha Joseph.**

**A4** denies that he gave the money to **Pw1 (Joseph Mugisha)**, **Pw1** testified in detail about the circumstances under which the accused took the **USD 200,000** to him. He appeared to me to have been a witness of truth and I believed him, especially since there is evidence that A4 had even bigger amounts of money at the time and had just stolen money from Equity Bank as I have already found. I find that A4 transmitted the **USD 200,000** to **Joseph Mugisha**.

**Whether it was for purposes of concealing the illicit origin of money.**

I have considered that the accused gave **Joseph Mugisha** a seemingly genuine explanation for his possession of the money (**that he had a big sugar deal with some Sudanese**) which was a lie. The fact that he gave an account of the money can only be read to mean that he wanted to conceal its criminal origin. This and the fact that he transmitted the money to him the day following the theft are **objective factual circumstances** which leave no doubt that he (**A4**) transmitted it to him for the purpose of concealing its illicit origin.

**Whether he had reason to believe that the money was proceeds of crime.**

**Pw19 (Emojong)**'s evidence as already laid out herein, and fact that he (**A4**) fraudulently withdrew the money from Equity Bank convinces me that he had reason to believe that it was proceeds of crime.

**I find that the prosecution has proved the charge of Money laundering against A4 in count 8 and in agreement with the ladies and the gentleman assessors I convict him as indicted.**

#### **Count 9**

##### **Money Laundering c/s 116 (c) & 136 (1) (a) AMLA.**

The particulars are that **Keeya Mathew (A6)** between April and May 2015 in Kampala District had in his possession **USD 400,000** knowing or having reason to believe at the time of receipt that the said money was proceeds of crime.

- **Whether Keeya Mathew (A6) had the USD 400,000 in his possession.**

The main evidence in this regard is of **Pw2 (Matovu Kenneth)** and **Pw3 (Lubega Bernard)** who testified that **A6 (Keeya Mathew)** informed them about the arrest of **Daudi Serwamba (A1)** over theft of money from a bank. On **Daudi Serwamba (A1)**'s instructions **Keeya Mathew (A6)** gave each of them **US\$ 100** to thank them for visiting him while in custody. **Pw2** later heard **Keeya (A6)** quarrelling with one **Naafi** over money he (**A6**) had given him to keep which was now less by **US\$ 10,000**.

Keeya Mathew (A6) later told them that Naafi had disappeared with US\$ 110,000 belonging to (A1) Daudi Serwamba and that it was part of USD 400,000 which A1 stole from the bank and gave to him (A6) to keep.

On a different day they saw one Kasumba enter Keeya's (A6) house and come out with a bag which Keeya (A6) said contained 100m/=. He told them that he gave the money to Kasumba to help look for Naafi.

Other evidence is that Keeya Mathew (A6) told Pw20 (D/AIP Ochan Geoffrey Francis) that Serwamba David Musoke (A1) gave him money and he bought motor vehicle No. UAX 536A M/Benz ML 500, silver in color--Exhibit P. 40) which he took to Naguru-go-Down. He led him to recover the vehicle.

In his defence Keeya Mathew (A6) denied that he knew A1 or that he had his dollars. He denied that he knows Kasumba and that he gave him 100m/= as Pw2 (Matovu Kenneth) and Pw3 (Lubega Bernard) testified. He maintained that on 15/3/2015 he was in Kabong District in Karamoja with Dw7 (Geoffrey Kibuli Nkonge) and only came back to Kampala on Monday 30/3/2015.

He admitted that he led (Pw19 Emojong) to a washing bay where Baker Sserwamba's vehicle, a Mercedes Benz No. UAX 536A was, but he is not the one who bought it as Pw16 (Charles Kamuvi) testified.

It is the law (Tumusiime Isaac v Uganda (Criminal Appeal No. 213 of 2002) and Katugena Stephen v Uganda (Cr. Appeal No. 60 of 1999) that an accused person who puts up an alibi does not assume the responsibility of proving it. The burden remains on the prosecution to adduce evidence which places him at the scene of crime.

- Pw2 (Matovu Kenneth) and Pw3 (Lubega Bernard) said they knew the accused.
- They talked to him during day time, and so there was no possibility of mistaken identity.
- They testified in a steady fast manner without prevarication and had no reason for giving false evidence against him.
- All evidence is that the information he gave them was unsolicited.

I believed them and disbelieved the defence account of events. I note the fact that they did not say that they saw the **USD 400.000** but considering that;

- He told them that he had it without them soliciting for the information,
- Other evidence (eg **Pw16-Kamuvi's**) is that he indeed bought a vehicle,
- **Pw18 (D/IP Byamugisha Emmanuel)** saw the police report about theft of **USD 100,000** in which one **Naafi** was the suspect. This evidence corroborates that of **Pw2 (Matovu Kenneth)** and **Pw3 (Lubega Bernard)** that **A6** informed them that one **Naafi** had stolen **USD 100.000** which was part of the **USD 400.000** **A1** stole from the bank and kept with him.
- **A6** revealed to **Pw20 (D/AIP Ochan Geoffrey Francis)** that **A1** gave him money which he used to buy motor vehicle No. **UAX 536A M/Benz ML 500, silver in color--Exhibit P. 40)** and led the police to recover it from Naguru-go-down.

All the above evidence shows that **A6 (Keeya Mathew)** had a close relationship with **A1 (Sserwamba David)** and that he (**A1**) trusted him with money. **Pw2 (Matovu Kenneth)** and **Pw3 (Lubega Bernard)**'s evidence is therefore with basis. I believed it and with it the fact that **A6** had in his possession the **USD 400,000**.

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

- I have accepted **Pw2 (Matovu Kenneth)** and **Pw3 (Lubega Bernard)**'s evidence that **A6** told them that **A1** had been detained over theft of money from a bank, which money he gave him to keep.
- **USD 400.000** is a big amount of money by any standard. **S. 122** of the Evidence Act which 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 is relevant.**

It is improbable that **A6 (Keeya Mathew)** could allow to keep such a big sum of money without knowing its source. He did not offer any explanation for the fact that he allowed to keep it.



- The circumstances, under which the money was kept, with some of it being given to one Naafi for safe custody, give rise to an irresistible inference that at the time of receipt A6 had reason to believe that it was proceeds of crime.

I find that A6 had reason to believe that the money he was keeping was proceeds of crime. **In agreement with the Ladies and Gentleman assessor, I convict him as charged.**

### **Count 10**

#### **Money Laundering c/s 116 (a) & 136 (1) (a) AMLA.**

The particulars are that **Keeya Mathew (A6)** on the 25<sup>th</sup> day of April 2015 in the Kampala District, for purposes of disguising or concealing the illicit origin of money in the sum of Ugx**80,000,000/=** converted the said money by purchasing a **Mercedes Benz ML UAX 536A** knowing or having reason to believe that the said money was proceeds of crime.

**The question to be determined is whether Keeya Mathew for purposes of disguising the illicit origin of UGX 80,000,000/= converted the said money by purchasing a Mercedes Benz ML UAX 536A.**

It has to be first determined whether he (A6) purchased the vehicle at all. The prosecution sought to rely on **Pw16's (Charles Kamuvi)** evidence that on **25/4/2015** around 3.00/4.00p.m a broker called **Kyeyune Beswel** took to him **Keeya** who he said was a broker for a buyer for a **Mercedes Benz ML 500. Reg. UAX 536A**. Pw16 handed the car and log book to them and they went and brought (**80m/=**) after about 20 minutes. **Kyeyune** was the one who gave him the **80m/=** but he issued a receipt to **Keeya**.

**Pw20 (D/AIP Ochan Geoffrey Francis)**'s evidence was that **Keeya Mathew (A6)** told him that **Serwamba David Musoke (A1)** gave him money and he bought motor vehicle No. **UAX 536A Mercedes Benz ML 500, silver in color--Exhibit P. 40**), which he took to Naguru-go-down, where he led him and **Pw21 (No. 40539 D/CPL Naturinda Patience)** to recover it.

**A6 (Keeya Mathew)**, while admitting that he led the police to recover the vehicle, denied that he told **Pw20** that he bought it with funds from A1. He maintained that it was **Baker Sserwamba's** vehicle.

Pw 16's evidence that he sold the vehicle to A6 for another person is corroborated by Pw20 who A6 told that he bought it for A1. It is not a coincidence that the two accounts tally in material particulars. The prosecution witnesses were independent and had no reason to give false evidence against A6. Moreover he led the police to recover the vehicle which galvanizes the evidence that he had links with it. I believed the two witnesses evidence and with it the fact that A6 used the 80m/= given to him by A1 to buy the vehicle. It is in evidence that A1 stole money from Equity Bank at around that time.

**Whether A6 (Keeya Mathew) converted stolen money by purchasing the vehicle.**

**Money Laundering** is an offence against “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 **S. 1 of the AMLA**).

It has to be determined whether A6 used money from an illicit origin to purchase the vehicle. **In this regard I considered that;**

- **A6** himself informed **Pw2 (Matovu Kenneth)** and **Pw3 (Lubega Bernard)** that **A1** had stolen money from the Bank, and
- the timing of the purchase which was soon after the fraud,

and conclude that the 80m/= which was used to buy the vehicle was from an illicit origin.

**Whether he converted the UGX 80,000,000/= by purchasing the vehicle.**

I find that the purchase process amounted to **turning illegitimately obtained property (the money) into seemingly legitimate property (the vehicle)**, which is synonymous to converting the money into a vehicle.

**Whether the purpose was to disguise the moneys illicit origin.** Under **S. 4 of the AMLA** the “purpose” required as an element of the crime of Money laundering may be inferred from **objective factual circumstances**.

- The fact that A6 knew that the money was proceeds of crime,
- the method employed in the purchase, where the real buyer of the vehicle (**A1**) did not participate in the purchase and the receipt was instead issued to A6 who was a broker, and

- the timing of the purchase which was soon after the theft, are **objective factual circumstances** which point to disguising of the illicit origin of the money.

**Whether he had reason to believe that the money was proceeds of crime.**

I believed **Pw2 (Matovu Kenneth)** and **Pw3 (Lubega Bernard)** who testified that he told them that **A1** had been detained over theft of money from a bank, which money he gave him to keep. The timing of the purchase of the vehicle coincides with the period money was stolen from the bank and given to **A6** to keep. **A6** therefore had reason to believe that the money he was given to buy the vehicle was proceeds of crime. **In agreement with the Ladies and Gentleman assessor, i convict him as charged in count 10.**

### **Count 11**

#### **Money Laundering c/s 116 (a) & 136 (1) (a) AMLA.**

The particulars were that **Sserwamba David Musoke** in April 2015 in the Kampala District, for purposes of disguising or concealing the illicit origin of money in the sum of UGX **255,000,000/=** transmitted the said money to **Sserwamba Isaac** knowing or having reason to believe that the said money was proceeds of crime.

- **Whether Sserwamba David Musoke for purposes of concealing the illicit origin of UGX 255,000,000/= transmitted the said money to Sserwamba Isaac.**

The prosecution relied on the evidence of **Pw23 (ASP Muramira Patrick)** who **A1** told that he was involved in the fraud and got a share of about 250m/= which he kept with his brother **Sserwamba Isaac (A7)**. He led the police to **Sserwamba Isaac's (A7)** at home Kkongge-Buziga, where he told **A7 (Sserwamba Isaac)** to bring the bag where he had kept the money, and 255m/= was recovered.

The accused maintains that the money belonged to his father, one (**Baker Sserwamba**) who gave it to **A7 (Sserwamba Isaac)** for safe custody.

From of the evidence and circumstances of the case, and on the basis of **S. 122** of the Evidence Act;

- Were it to be that the money belonged to his father, A1 would not have led the police to recover it. Such conduct would be illogical and irrational since the police was inquiring about money stolen from Equity Bank.
- were it to be true that the money belonged to his father, the **common course of human conduct** would be for A7 to refuse to hand over the money to the police at A1's instance. It is implausible that he readily surrendered it to the police without question or hesitation. The only reason he obeyed A1, and the only logical conclusion is that he (A7) knew that it belonged to him (**A1**).
- Moreover the evidence is that on arrival at **A7's** home, **A1** told him to "**bring the bag**" where he had kept the money. The fact that the money was indeed in a bag, and given that the stated reason their father kept the money with **A7** is that he feared it could be stolen, it is improbable that if the money belonged to him indeed, A1 would know how and where **A7** kept it. The only reason A7 knew where and how it was kept was because it was his.

I believe, and it is my finding that the money belonged to **A1 (Sserwamba David)**, and that he transmitted it to **A7 (Isaac Sserwamba)**. Like he told **Pw23**, it was part of what he stole from the Bank.

About the purpose for which he transmitted it to A7, inferring from the **objective factual circumstances** which are that;

- ✚ the fraud had just occurred and investigations were going on,
- ✚ A1 was a key suspect since he was a key actor in the payment process,
- ✚ It was a huge amount of money which would ordinarily be taken to a bank rather than be kept in a bag in a closet; **I find that he sought to conceal the illicit origin of the money.**

- **Whether he had reason to believe that the money was proceeds of crime.**

There is abundant evidence that **A1** stole money from Equity Bank. Considering the evidence that he told **Pw23** that it was part of the stolen money and from the timing of its recovery I am positive

that he had reason to believe that it was proceeds of crime. **In agreement with the Ladies and Gentleman assessor, i convict him as charged in count 11.**

### **Count 12**

#### **Money Laundering c/s 116 (c) & 136 (1) (a) AMLA.**

The particulars are that **A7 (Sserwamba Isaac)** between April and May 2015 in Kampala District, had in his possession **UGX 255,000,000/=** knowing or having reason to believe at the time of receipt that the said money was proceeds of crime.

#### **Whether Sserwamba Isaac had in his possession UGX 255,000,000.**

**A7 (Sserwamba Isaac)** doesn't deny the fact of possession of the money. The prosecution evidence is that it was indeed recovered from him. **I find that A7 had in his possession the UGX 255,000,000/=.**

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

**A6** maintains that the money belonged to his father, one (**Baker Sserwamba**) who gave it to him for safe custody.

**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.**

I did not believe the accused's account for the following reasons;

- Bearing in mind the **common course of human conduct**, had the money indeed belonged to his father, it is improbable that at **A1's** instance he (**A7**) would readily surrender it to the police without explanation. The only logical conclusion is that he knew that it belonged to (**A1**).
- the evidence is that on arrival at **A7's** home, **A1** told him to "**bring the bag**" in which the money was kept. The fact that the money was indeed in a bag corroborates the evidence that the money belonged to **A1**. Moreover, given that the stated reason their father allegedly kept the money with **A7** is that he feared it could be stolen, it is strange that **A1** knew how and where **A7** had kept it, let alone that he had it. The only reason he knew who, where and how it was kept was because it was his.

- There is no reason A1 could have taken the police to recover it if it was not linked to the crime. It is illogical that the police were looking for stolen money and he led them to his father's genuine money.

I believe, and it is my finding that the money belonged to **A1 (Sserwamba David)**.

The remaining question is whether A7 had reason to believe that it was proceeds of crime.

- Under **S. 122** of the **evidence Act** I am entitled to **infer the existence of any fact which i think 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.** **255m/=** is a big amount of money by any standards, and should have been kept in a bank and it is in evidence that A7 operates a bank account. No explanation was given for money whose safety was already a matter of concern was not deposited in the bank. The fact that it was kept in that manner must be read to have been an attempt to avoid the mandatory scrutiny and prevailing monetary restrictions of banks. This is good ground for an adverse inference that he knew that the money was from an illicit origin.
- His conduct of insisting that it belonged to his father when all indication is that it belonged to A1 leads me to believe that he was aware that it was proceeds of crime. If he was not aware of its tainted nature he would have readily revealed its true origin. He cannot feign ignorance of its nature.
- the timing of its transmission to him, (soon after the fraud) persuade me that he had reason to believe that it was proceeds of crime.

**I find that he had reason to believe that the money was from an illicit origin and in agreement with the Ladies and gentleman assessor I convict A7 as charged in count 12.**

### **Count 13**

#### **Conspiracy to commit a felony C/s 390 of the Penal Code Act.**

The particulars are that **A1 (Sserwamba David Musoke), A2 (Okoth Reagan), A3 (Kavuma Moses), A4 (Kalungi Abubaker), A5 (Shafiq Mubarak), A6 (Keeya Mathew) and A7 (Sserwamba Isaac)** and others still at large between the 28<sup>th</sup> march 2015 and the 19<sup>th</sup> May 2015 in the Kampala District together conspired to commit a felony of theft of USD 1,450,000 from Equity Bank Uganda.

- Whether the accused persons conspired with each other to commit a felony of theft.

**A4 (Kalungi)**'s dealings with **Sserwamba David (A1)** (*particularly the evidence that A1 asked A4 to get him an IT expert since there were Sudanese accounts through which huge sums of money were transacted*) were testified about by **Pw19 (D/SP Emojong Godfrey)** whose evidence I believed.

I believed **Pw23's (ASP Muramira Patrick)** evidence that **Mubarak Shafiq (A5)** confided in him that **Kalungi Abubaker (A4)** was the master planner of the fraud, and that **A1 (Sserwamba David)** admitted that he was involved in the fraud, and that he got a share of about 250m/= which was recovered from A7's house. I also believed **Pw22's (Erisa Ssebuwufu)** evidence that **A4 (Kalungi)** wrote and signed on the withdraw slips by which the money was paid.

The above evidence shows that **A1 (Sserwamba David)** and **A4 (Baker Kalungi)** had a meeting of minds with regard to a common design to steal the money. They acted in pursuance of a criminal purpose held in common between them.

**In Uganda Vs Kalumba Charles and 2 ors** it was held that to prove conspiracy the prosecution must prove that the accused persons reached a decision to perpetrate their unlawful object. It has to be proved that the acts of the accused persons were done in pursuance of a criminal purpose held in common between them. See also **Angodua Kevin Vs Uganda, Criminal Appeal No 0013/2016**.

**A2 (Okoth Reagan)** was found not guilty of embezzlement, the main reason being that there was no evidence that he stole the money. The charge of conspiracy to steal cannot be sustained against him. There is no evidence that **A3 (Moses Kavuma)**, **A5 (Shafiq Mubarak)**, **A6 (Mathew Keeya)** and **A7 (Isaac Sserwamba)** conspired with any one to steal the money. The evidence is that **A5, 6 and 7** got involved in the matter after the money had been stolen.

**I acquit each of A2, 3, 5, 6 and 7 of the offence of conspiracy to steal, but convict each of A1 (Sserwamba David) and A4 (Baker Kalungi) of the offence of conspiracy to steal as charged in count 13.**

**There is evidence to support convictions against;**

- ❖ **A1 (Sserwamba David Musoke)** for embezzlement as charged in counts 1, 2 and 3, for Money Laundering as charged in count 11, and of conspiracy to steal as charged in count 13. **I convict him on each of those counts as charged.**
- ❖ **A2 (Okoth Reagan)** for Causing financial loss as charged in alternative counts 1, 2 and 3. **I convict him on each of those counts. I however acquit him of the charge of conspiracy to steal in count 13.**
- ❖ **A4 (Abubaker Kalungi)** for Money Laundering as charged in counts 4, 6, 7, 8 and 13. **I convict him on each of those counts.**
- ❖ **A5 (Shafiq Mubarak)** for Money Laundering count 5. **I convict him on that count. I however acquit him of the charge of conspiracy to steal in count 13.**
- ❖ **A6 (Mathew Keeya)** for Money Laundering as charged in counts 9 and 10. **I convict him on each of those counts. I however of the charge acquit him of conspiracy to steal in count 13**
- ❖ **A7 (Isaac Sserwamba)** for Money Laundering as charged in count 12. **I convict him on that count. I however acquit him of the charge of conspiracy to steal in count 13.**

**I acquit A3 (Moses Kavuma) of the offences of embezzlement, the alternative counts of causing financial loss and of conspiracy to steal in count 13.**

**Margaret Tibulya**

**Judge**

**30th/May/2017.**