

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
ANTI CORRUPTION DIVISION AT KOLOLO
CRIMINAL SESSION CASE 2 OF 2018

UGANDA:..... PROSECUTOR

VRS

NABUNYA JULIET:..... ACCUSED

BEFORE: GIDUDU, J

JUDGMENT

Juliet Nabunya, a former employee of FROLI INVESTMENTS (U) LTD is indicted with several counts as indicated below:-

- (i) Count One- Embezzlement C/S 19(b)(iii) of the Anti-Corruption Act 2009. She is charged with stealing UGX **384,662,825=** the property of **Froli Investments Ltd** between May 2014 and January 2017.
- (ii) Counts of Forgery C/Ss 342 and 347 of the PCA, Cap 120. They are contained in the following counts:-
2,4,6,8,10,12,14,16,18,20,22,24,26,28,30,32,34,36,38,40,42,44,46,48,50,
52,54,56,58,60,62,64,66,68,70,72,74,76,78,80,82,84,86,88,90,92,94,96,9
8- She is accused of forging bank deposit slips marked **Q1 to Q49** contained in **exhibit P4** purporting that she had banked customer cheques in favor of **Froli Investments (U) Ltd and Kiyimba John Fred** where as not.
- (iii) Uttering false documents C/S 351 of the PCA, Cap 120. They are contained in the following counts:-
3,5,7,9,11,13,15,17,19,21,23,25,27,29,31,33,35,37,39,41,43,45,47,49,51,
53,55,57,59,61,63,65,67,69,71,73,75,77,79,81,83,85,87,89,91,93,95,97,9
9- She is accused of knowingly and fraudulently uttering false bank

deposit slips to her employer on various dates between May 2014 and January 2017

The accused was an employee of **Froli Investments (U) Ltd** incorporated on *16th Sept 2009* and operating in Kikuubo, Kampala. She was employed as a sales representative. Her duties included marketing products such as cooking oil and soap which the company traded from Bidco Company in Jinja.

The business operations were for the accused to find market and supply customers with goods on credit in exchange for postdated cheques. The cheques were to be deposited with the company cashiers before picking them for banking upon maturity.

It is alleged that between May 2014 and January 2017, the accused returned some cheques to customers and demanded that they pay cash instead because the company had liquidity challenges. She would steal the cash and forge bank deposit slips purporting to have banked the cheques whereas not.

The scam was discovered when John Fred Kiyimba, the owner of the Company detected fraud in another company called **Kiiza stores** which he also owned and operated in the same premises. **Kiiza stores** deals in mainly sugar from **kinyara sugar works Ltd**.

An external audit was done by Kwiri Associates. The audit revealed that UGX **384,662,825=** was stolen through presenting forged deposit slips. Customers such as Prossy Assimwe, **PW5**, Hope Twasiima Kaheesi, **PW9** and Isaac Asiimwe, **PW10**, testified that the accused returned some cheques which they had issued. They paid her cash because she said the company had liquidity challenges.

Bankers such as Lamunu Beatrice, **PW4**, Rhoda Agwang, **PW11** and Nakuya Juliet Mayanja, **PW12** denied signing the questioned cheque deposit slips or receiving cheques against the questioned cheque deposit slips. They denied knowledge of the purported bank stamp impressed on the deposit slips. They distinguished it from their official stamp. A document examiner, Chelangat Sylvia, **PW6**, examined the stamps, deposit slips and samples of the accused's handwriting. She concluded that the slips were written by the hand that tallied with the sample hand writing of the accused while the

stamp impressions did not belong to the official stamp of standard chartered bank. It was a forgery

The accused denied the charges. She admits being an employee of Kiyimba John Fred before he incorporated Froli Investments (U) Ltd. She continued working for the company until February 2017 when Fred Kiyimba, **PW15** terminated her employment.

While working in the field, she was called back to see Kiyimba. He questioned her about continued contacts with drivers who had been dismissed. He also asked why she did not report theft of his sugar from Kiiza Investments.

In April 2017, during Easter weekend, she was arrested and taken to **CPS** Kampala where she stayed for close to three weeks without charges.

She was forced to sign documents she did not author because she wanted to be released. She was charged in Court and denied charges of embezzlement, forgery and uttering false documents.

It was her case that all cheques received from **PW5, PW9 and PW10** were banked upon maturity. She denied returning any cheques to those customers in exchange for cash.

It was her case that Kiyimba was her man friend and these charges are framed up because of love gone sour. It was her testimony that **PW15** gave her a land title for land at Buloba to appreciate her love for him.

Further, it was her testimony that **PW15** used to give her money which she banked on her Centenary bank account. She also bought expensive clothes and a car. She has since sold the car and the plot of land to raise capital to do business after she lost employment.

The prosecution has the burden of proving all the essential ingredients of the offence beyond reasonable doubt. If at the conclusion of the trial there is a reasonable doubt, it is resolved in favour of the accused.

On the charge of Embezzlement the following ingredients must be proved beyond reasonable doubt. That the accused was an employee of the company. That she stole the money. That she received it money by virtue of her employment.

On the charge of forgery, the prosecution must prove that the accused made a false document with intent to defraud.

On the charges of uttering false documents, the prosecution must prove that the accused had knowingly and fraudulently uttered a false document.

It is not in dispute that the accused was an employee of **Flori Investments Limited**. This was an agreed fact and admitted by the accused in her defence. She was a sales representative.

Flori Investment (U) Limited was incorporated on 16th September 2009 as per Exhibits **P1 and P2**.

The issue for resolution in count one is whether the accused stole the money in question or not. To constitute theft the prosecution is required to prove that the accused acted fraudulently and without claim of right in taking the money. A person is deemed to have acted fraudulently if he or she takes or converts the money with intent to use it at his or her will even if he or she may intend afterwards to pay the money to the owner.

A person is taken to have used the money at his or her own will if that person deliberately or recklessly exceeds the limits of authority allowed to him or her or deliberately or recklessly disregards any rules of procedure prescribed by the owner in respect of the money(**S. 254(1)(2)(e)(3)PCA**)

Miss Acio Marion, senior state attorney, invited court to consider the evidence of **PW5, PW9 and PW10**. These were customers who were said to have issued cheques which the accused returned and asked for cash instead claiming that the company needed cash to solve liquidity problems. It was their evidence that they obliged and gave her cash in exchange for the postdated cheques.

The prosecution contends that the accused stole this cash and attempted to cover the theft by forging cheque deposit slips to appear as if she had banked the cheques whereas not. This according to the prosecution constituted a fraudulent intent to steal the money.

Miss Acio also submitted that what was stolen is cash that belonged to the company. It was her view that it is immaterial whether the cheques had been

written in the names of **Flori investments (U) Ltd** or **John Fred kiyimba**. The company was owned and operated by John Fred Kiyimba.

The prosecution further submitted that the accused accessed this money by virtue of her employment as a sales representative. Her main duties included taking orders from customers and receiving payments after delivering the goods. The prosecution contended that the accused's bank statement in **Exhibit P14** in Centenary Bank showed that she occasionally made huge deposits on her account which was not commensurate with salary.

On the other hand, Mr Sekyanda Ivan learned counsel for the accused disputed the charges in count one contending that there were two legal persons receiving money from customers. These included **Flori Investment (U) Ltd** and **John Fred Kiyimba**. He was of the view that the prosecution didn't clarify what money was due to Kiyimba as a person and what money was due to **Flori Investments (U) Ltd** as a company. He contended that charging the accused with stealing **UGX384,662,825= from Flori investment (U) Ltd** was not correct because evidence showed that some cheques were written in the names of Fred Kiyimba.

It was his view that all this money didn't belong to the company. The accused justified deposits of money into her account as money Mr. Fred Kiyimba used to give her as his girlfriend. She also stated that Kiyimba gave her more than just money. He gave her a plot of land at Buloba plus other good living standards.

Ms Acio dismissed the love affair as an afterthought since PW15 was not challenged about it in cross examination.

The evidence of PW5, PW9 and PW10 is straight forward. They used to receive **Bidco** products from **Flori Investments (U) Ltd** supplied by the accused. They used to give her post dated cheques and between May 2014 and January 2017 she would return some cheques and demand cash in lieu. They gave her cash and had no problem with the arrangement because they used to get more supplies. The accused had been introduced to them by Mr. Kiyimba. They destroyed the cheques returned since they had given her cash.

The audit done by Stephen Kwiri, PW14 which is contained in exhibit P16 reveals that cheques received from PW10 by the accused which she did not

bank but converted into cash amounted to **205,027,341=**. Cheques received from PW9 by the accused which she did not bank but converted into cash amounted to **52,241,100=**. Cheques received from PW5 by the accused which she did not bank but converted into cash amounted to **127,394,826=**. The grand total is **384,662,826=**. All the three customers have dealt with the accused since 2008 when she was first employed by Kiyimba before he floated **Flori investments (U) Ltd** in 2009. It is their word against the accused's denial. I have no reason to doubt their evidence against the accused. They believed her because business went on as usual until much later in 2017 when PW15 complained.

Examination of the hand writing on the cheque deposit slips in exhibit P4 by Sylvia Chelangat, the hand writing expert who testified as PW6, led to her conclusion that accused authored the slips. She compared several hand writings of persons such as Kiyimba, PW5, PW9, PW10, PW4, PW12, PW11 and the accused with the hand writing in the deposit slips. She concluded that the accused's hand writing matched the one in the cheque deposit slips. She observed similarities in design, and shape of letters and words, positioning of words on paper, formatting of writing and relative sizes and spacing of letters and words.

PW6's evidence was unchallenged in regard to the findings. When I consider the evidence of PW5, PW9 and PW10 regarding how the accused whom they had known and dealt with for many years used to return cheques and demand cash, I believe the findings of PW6. The accused had the motivation to cover her tracks since she had cashed the cheques and taken the money. Her denial that she did not return any cheques can only be false.

I agree with the submission by Ms Acio that the act of falsifying cheque deposit slips was to defraud the owner of the money. This is a permanent deprivation of the owner of the money. This amounts to theft within the definition of section 254 of the PCA.

Mr Sekyanda put up a spirited argument that since evidence by PW5, PW9 and PW10 is that they wrote some cheques in the names of John Fred Kiyimba while others in the names of **Froli Investments (U) Ltd**, these being two legal persons renders charges in count one invalid. It was his view that the audit report in exhibit P16 did not differentiate money due to

Kiyimba as a person and money due to the company. He asked court to find the charges in count one are defective and dismiss them.

Mr. Sekyanda's submission would be valid if both Kiyimba and **Froli Investments (U) Ltd** were trading and selling goods to PW5, PW9 and PW10. On the contrary, the evidence adduced by Mr. Kiyimba (PW15) and supported by the accused is that PW15 was trading in his name as John Fred Kiyimba until 2009 when **Bidco** which supplies him with products to sell in Kampala asked him to float a company because they did not want to deal with individuals.

As a result **Froli Investments (U) Ltd** was registered on 16 Sept 2019 as shown by exhibits P1 and P2. It is the company that supplied goods to PW5, PW9 and PW10. Mr. Kiyimba ceased trading with **Bidco** in September 2009. Between 2014 and 2017, when these charges arose, it is the company and not Kiyimba who was employing the accused and it is company products that the customers were buying. All money due from products supplied by the company belongs to the company. Customers such as PW5, PW9 and PW10 testified that they would write some cheques in the names of Kiyimba and others in the company name because they believed the money went to one person anyway. Indeed a look at **exhibit P4** shows that they were writing cheques interchangeably.

It is my view that since it is the company that supplied goods to the customers, even if some customers wrote cheques in the names of the owner of the company, that fact did not make the money his because he had not supplied any goods to warrant payment. Such money received by Mr. Kiyimba would be received on behalf the company. Indeed if Mr. Kiyimba does not declare that money he could be charged with stealing company funds just as the accused has been charged.

The gentleman assessor advised me to find the accused guilty of embezzlement. I agree with him. I find the accused guilty of embezzlement on count one.

On the charges of forgery, the prosecution must prove that the accused made the false documents with intent to defraud. There are 49 counts of forgery each representing a cheque deposit slip. A person makes a false document when he or she purports the same to be what it is not or signs a document in the name of any person without his or her authority or in the name of a

person personated by the person signing the document (see **S. 345(b)(d) PCA**).

The intent to defraud is presumed to exist if it appears that the time when the false document was made there was an existence a specific person capable of being defrauded by it (see **S. 346 PCA**).

Ms Acio for the state submitted that the cheque deposit slips contained in **Exhibit P4** were subjected to hand writing analysis by PW6 who is handwriting expert. She made a report contained in **Exhibit P11** which concluded that based on the samples of the accused's handwriting contained in **police form 17A** which forms **Exhibit 10**, she was of the opinion that the accused was the one that authored and signed the bank deposit slips.

She asked court to find that the accused in the course of her duties authored these bank deposit slips in order to cover the theft of money which she had exchanged from the cheques originally issued to her by PW5, PW9 and PW10.

The defence challenged this submission contending that the genuine deposit slips were not brought and considered in order to find if the handwriting in those genuine slips was consistent with the handwriting on the forged slips.

Mr Sekyanda also faulted the police for not retrieving the forged stamps from the latrine where the accused is said to have disposed them of. Perhaps I should note here that the accused was not charged with forging bank stamps. There was, therefore, no duty to retrieve them from the pit latrine.

Witnesses who worked with the bank such as Lamunu Beatrice (**PW4**), Rhoda Agwang (**PW11**) and Nakuya Juliet (**PW12**) denied using their teller stamps on any of the questioned deposit slips. They also denied signing any of the questioned slips. The handwriting expert supports their evidence that it was not their stamp nor their signatures or handwriting on the deposit slips.

On the other hand, the accused denied writing or signing or uttering those bank slips. She criticized the prosecution for not availing a CCTV recording either from the bank or from **Flori Investments (U) Ltd** to identify the person who picked or filled in or uttered the questioned cheques deposit slips to **Flori Investments (U) Ltd**.

There is no doubt that the questioned cheque deposit slips were not transacted on the accounts of either the company or that of Kiyimba. No credits were made on the two bank accounts as shown by exhibits P7 and P8. These two represent the bank statements of Froli Investments (U) Ltd and John Fred Kiyimba respectively. The questioned cheque deposit slips were intended to defraud the company which had supplied goods to PW5, PW9 and PW10 that the goods had been paid for and money received whereas not. The intent to defraud is crystal clear.

I have already decided in count one that the evidence of the hand writing expert when considered with evidence of PW5, PW9 and PW10 place the forgery on the accused. It was not necessary to get the uncontested slips as learned counsel for the accused did because such slips were not tainted with fraud. The accused's sample hand writing was sufficient for lab analysis. The prosecution proved beyond reasonable doubt that the accused forged the cheque deposit slips. I agree with the gentleman assessor that the accused is guilty of forgery on each of the 49 counts in the indictment.

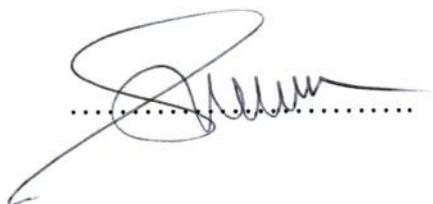
Finally there are 49 counts of uttering false documents. The prosecution contends that the accused not only forged the false deposit slips but also uttered them to her employer in order to cover up for the theft of the money that she had obtained from PW5, PW9 and PW10. Miss Acio submitted that the accused did so knowingly and with the intent to defraud her employer by purporting that she had banked the cheques whereas not. The corresponding bank statements of **Flori Investments Ltd** and **John Fred Kiyimba** contained in Exhibit P7 and P8 do not reflect the alleged cheques deposits.

The defence challenged this submission that it is not the accused who uttered the forged deposit slips. It was submitted that no video footage was presented to show the accused filing those questioned deposit slips in the company records.

Namuyanja Jalida PW2 who was working under the supervision of the accused attributed the questioned deposit slips to the accused person because it was the accused responsible for the customers who were supposed to have issued those cheques. It was her evidence that banking with standard chartered kikuubo branch was the responsibility of the accused. Besides the issuers of the cheques whose particulars are indicated in the deposit slips all said they gave them to the accused before she returned them in exchange for

cash. I have already found that the accused forged the slips with intent to defraud the company of the money she had received from the company customers. She stole the money and attempted to cover her tracks. The audit report blew her cover. It is the accused who uttered the slips to the company to complete a scheme to steal company funds. There is no need for a video footage to prove uttering false documents. The utterance was not a stand-alone crime. It was part of a series of crimes committed by the accused such as embezzlement and forgery. The accused knew they were false and intended to defraud the company of its revenue from sales. The prosecution proved beyond reasonable doubt that the accused uttered the false cheque deposit slips.

In conclusion, the prosecution evidence when considered against the accused's defence leaves me in no doubt that the prosecution discharged its burden to the required standard. All the essential ingredients of each of the charges against the accused were proved beyond reasonable doubt. I am in agreement with the gentleman assessor that the accused is guilty as charged. I convict her on the charges of embezzlement, forgery and uttering false documents.

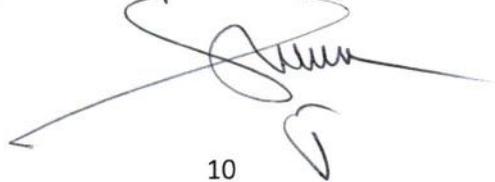


Gidudu, J

30th August, 2019

Absent present
Actio for the state
Seyanell for the accused
file - clerk

Two pages sent in open court



28/8/19