THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA

CONSOLIDATED CRIMINAL APPEAL NO.91 OF 2018

(Arising from High court Anti-Corruption Division session case No HCR-OO-AC SC-0012-12)

1. **JOE SSEMUGOOMA**
2. **APPOLO SENKEETO (alias KALYESUBULULA MARK)**
3. **WILBERFORCE SENJAKO :::::::::::::::::::: APPELLANTS**

VERSUS

UGANDA :: RESPONDENT

AND

CRIMINAL APPEAL NO. 112 OF 2018

UGANDA :: APPELLANT

VERSUS

1. **ENG. ABRAHAM BYANDALA**
2. **ENG. BERUNADO SSEBBUGGA KIMEZE**
3. **JOE SSEMUGOOMA**
4. **MARVIN BARYARUHA :::::::::::::::::::: RESPONDENTS**
5. **APPOLO SENKEETO Alias KALYESUBULULA MARK**
6. **MUGOTE ISAAC**
7. **WLBERFORCE SENJAKO**

CORAM: HON. JUSTICE GEOFFREY KIRYABWIRE, JA

HON. JUSTICE MUZAMIRU MUTANGULA KIBEEDI, JA

HON. JUSTICE JOHN OSCAR KIHIKA, JA

JUDGMENT OF COURT

Background

This is a consolidated Appeal emanating from the decision of Justice Lawrence Gidudu delivered on 29th of August 2018. The consolidated Appeals are Criminal Appeal No. 112 of 2018, against both the acquittals and sentence, and Criminal Appeal No 91 of 2018, against convictions and sentence. The Respondents numbers 1,2,3,4, and 7 are former employees at Uganda National Roads Authority (UNRA), a Government entity charged with construction and maintenance of public roads in Uganda. They were involved in the procurement, award of contract and payment of the advance for upgrading of Mukono-Kyetume- Katosi/Kisoga Nyega road, allegedly before due diligence was concluded on Eutaw Construction Company Inc. of 109 W Commerce ST, Aberdeen Mississippi USA, the company that bided and was awarded the contract.

The Parties

Respondent Number 1, Eng. Abraham Byandala, was charged with and acquitted of Abuse of office contrary to (C/S) 11(1) Anti-Corruption Act and Disobeying of Lawful Orders C/S 35(c) of the Inspectorate of Government Act. Respondent number 2 (Eng. Berunado Ssebuga Kimeze), number 3 (Joe Ssemugooma) and number 4 (Marvin Baryaruha) were charged with Abuse of office C/S 11 and Causing Financial Loss C/S 20 both of the Anti-Corruption

Respondents' numbers 2, 3 and 4 were charged with Abuse of office C/S 11 and Causing Financial Loss C/S 20 of the Anti-Corruption Act, only Respondent 3 was convicted on charges of Abuse of office.

Respondent number 5 (Apollo Senkeeto) in Criminal Appeal No. 112 of 2018, while purporting to be the country representative of Eutaw Construction Company Inc. of 109 W Commerce ST, Aberdeen Mississippi USA, was said to have forged and uttered a false performance guarantee NO. 00PGO78/2O73, Advance Payment guarantee No. OOAPSO47 /2013, Advance payment bond No: OOI 113311 100016212013, Performance bond No: O1O1132/1/OOO299/2013, bid guarantee No. 010160OO45 and Bank Guarantee NO. 42664 to UNRA. In addition, by false pretenses and with intent to defraud, he obtained Performance Bond No.12O/I2O111O181O312O14 and Advance Payment Bond No. OIO/133/1/00067012014. Further without any claim of right Respondent number 5 stole advance payment of UGX 24,790,832,522/=. Respondent number 6 (Mugote Isaac) was a banker who with intent to defraud conspired with Respondent number 5 to defraud UNRA of UGX 24,790,823,522/=. ln addition, Respondent number 6 abetted the offence of Causing Financial loss when he confirmed to Respondent number 7 (Wilberforce Senjako) that Performance Guarantee NO. OOPGO7812013 and advance payment security No. 00APS04712O13 were authentic and issued by Housing Finance Bank Ltd whereas not.

Respondent number 5 was convicted of theft of UGX 24,790,823,522 /=, uttering of false documents (six counts) obtaining execution of securities by false pretense (2 counts) and acquitted on the charge of conspiracy to defraud.

Respondent number 6 was charged and acquitted on the charges of conspiracy to defraud and abetting the offence of Causing Loss C/S 20 of the Anti-Corruption Act, 2009.

Respondents number 7 and 3 were jointly charged with corruption C/S 2 (i) of the Anti-Corruption Act and Causing Financial Loss C/S 20 Anti-Corruption Act. They were convicted on the charge of Corruption and acquitted on the charge of Causing Financial loss.

MEMORANDA OF APPEAL

Criminal Appeal No 112 of 2018

The Memorandum of Appeal in Criminal Appeal No. 112 of 2018 set out the following Grounds of Appeal;

1. The learned trial Judge erred in law and fact when he held that the first Respondent was justified in directing Uganda National Roads Authority (UNRA), to immediately sign a contract for the upgrading of Mukono - Kyetume -Katosi-Kisoga-Nyenga Road with EUTA, construction company Ltd, thereby acquitting the first Respondent of the offence of abuse of office.
2. The learned trial Judge erred in law and fact when he misinterpreted the application of the principle of due diligence

in the procurement process, thereby acquitting the first Respondent on count number 1, second Respondent on count number 5, second and third Respondents on counts numbers 6 and 7, fourth Respondent on counts numbers 8 and 9.

3. The Learned Trial Judge erred in law and fact when he found that the first Respondent did not disobey the order of the Inspector General of Government stopping works on Mukono-Kyetume-Katosi-Kisoga-Nyenga Road, thereby acquitting the first Respondent on count number 3.
4. The learned trial Judge erred in law and fact when he failed to properly evaluate evidence that the fourth Respondent rendered wrongful advice on due diligence and contract signing in the circumstances, hence acquitting the fourth Respondent of the offence of abuse of office.
5. The learned trial Judge erred in Law and fact when he found that the Appellant did not prove the offence of causing financial loss, there by acquitting the second and third Respondents on count number 6, fourth Respondent on count number 8, third and seventh Respondents on count 10, sixth Respondent on number count 23.
6. The learned trial Judge erred in Law and fact when he failed to properly evaluate evidence and concluded that the Appellant did not prove conspiracy between the fifth and sixth Respondents, thereby acquitting both on count number 22.

7. The Learned Trial Judge erred in Law and fact when he did not make any orders for compensation against the Fifth Respondent.

The following are the Orders that the Appellant prayed for: -

1. Allow the Appeal
2. Convict and sentence the Respondents in respect of counts I, III, V, VI, VII, VIII, IX, X, XXII, XXIII as charged.
3. Refund of UGX 24,790,824,544/= by the Respondents

CRIMINAL APPEAL NO. 91 OF 2018

The Appellants in Criminal Appeal No. 91 of 2018 each filed their Memorandum of Appeal. The Memorandum of Appeal of the first Appellant, **JOE SEMUGOOMA**, set out the following Grounds of Appeal;

1. The Trial Judge erred in Law when he failed to property evaluate the evidence on the court record thereby reaching a wrong decision.
2. The trial Judge erred in law and fact when he considered and believed the Prosecution case in isolation of the Defence case.
3. The trial Judge erred in law and fact when he convicted the Appellant on circumstantial evidence which was too weak to prove any of the counts.
4. The trial Judge erred in law and fact when he considered matters/factors not on the court record as aggravating factors

(and as factors outweighing the mitigation by the Appellant) and thus sentenced the Appellant to 5 years on each count.

5. The trial Judge erred in law and fact when he misconstrued the facts and the evidence on the record to guide the sentencing of the Appellant.

The Memorandum of Appeal of the second Appellant, **APOLLO SENKEETO**, set out the following Grounds of Appeal;

1. The learned trial Judge erred in law and fact when he failed to evaluate the evidence on record as a whole and thereby failing to resolve glaring contradictions in the Appellant's favor. He held that the Appellant stole the sum of 24,790,823,522/= (Twenty-Four Billion Seven Hundred and Ninety Million three thousand five Hundred and twenty-two Uganda Shillings) when he found as a fact that 12,000,000/= (Twelve Million shillings) was paid to CICO Uganda, 4,500,000/= (Four Billion Five Hundred Thousand) was paid to Eutaw Construction Company, Inc. in the United States and an unspecified amount purchased twelve vehicles and equipment for the Katosi Road Construction.
2. The learned trial Judge erred in law when he held that the Appellant stole the said sum when he at the same time found that Uganda National Roads Authority (UNRA)-did not suffer any financial loss and acquitted 4 of the other accused in the same case on grounds of no financial loss.

3. The learned trial Judge erred in law and fact when he held that the Appellant stole that said sum when the money had been paid according to procurement procedures and sanctioned by UNRA.
4. The learned trial Judge erred in law and fact when he held that money paid into a company's account could be stolen from the Government of Uganda by the Appellant.
5. The learned trial Judge erred in law and fact when he held that the Appellant acted fraudulently in any way basing on uncollaborated circumstantial evidence.
6. The learned trial Judge erred in law and fact when he held that the Appellant uttered and/or executed false securities basing on uncollaborated circumstantial evidence.
7. The learned trial Judge failed to evaluate properly the evidence regarding the true nature of Eutaw Construction Company Inc.
8. The learned trial Judge erred in law and fact when he failed to consider the full impact and effect a resolution signed by Mr. Thomas Elmore before a Notary public.
9. The learned trial Judge misdirected himself on the true impact of the evidence produced by the prosecution and the Appellant.
10. The learned trial Judge erred in law and fact when he held that the IGG can prosecute a private person.
11. The learned trial Judge erred in law and fact when he dismissed the motion in arrest of judgement.

12. The learned trial Judge erred in law and fact when he took into account the Appellant's lifestyle when no evidence was adduced to this effect.

13. The learned trial Judge erred in law and fact when he allowed his personal views to color his judicial function in considering and sentencing the Appellant.

The Memorandum of Appeal of the third Appellant, **WILBERFORCE SENJAKO**, set out the following Grounds of Appeal;

1. The learned trial Judge misdirected himself on the law of circumstantial evidence when he relied on the evidence of the Appellant's possession or the Statewide Insurance Corporation ("SWICO") securities to find as he did that it was the Appellant's duty at Uganda National Roads Authority (UNRA) to verify securities.
2. The learned trial Judge misdirected himself in law when he relied on the evidence of Mr. Joe Ssemugooma himself being a co-accused to find that it was the Appellant's duty to verify securities and that the Appellant neglected his duty.
3. The learned trial Judge misdirected himself in law when he based his conviction of the Appellant on the circumstantial evidence of the SWICO Securities.
4. The learned trial Judge erred in law and fact when he found that the Appellant neglected to perform his duty as a result of which Government lost money, having found that actual loss was not proven by the prosecution.

5. The learned trial Judge erred in law and fact when he sentenced the Appellant being a junior officer with the same sentence as his superior and co-accused, Mr. Joe Ssemugooma.
6. The learned trial Judge erred in law and fact when he failed to properly evaluate the evidence on record.

Duty of a first appellate court

This is a first Appeal and this court takes cognisance of the established principles regarding the role of a first appellate court. The cases of **Kifamunte Henry v Uganda Supreme Court Criminal Appeal No. 10 of 1997** and **Pandya v. R [1957] EA 336, and Bogere Moses and Another v. Uganda, Supreme Court Criminal Appeal No. 1 of 1997** in essence have established that a first appellate court must review/rehear the evidence and consider all the materials which were before the trial Court, and come to its own conclusion regarding the facts, taking into account that it has neither seen nor heard the witnesses; and in this regard, it should be guided by the observations of the trial court regarding demeanour of witnesses.

Rule 30 of the Judicature (Court of Appeal Rules) Directions SI 13-10 is also relevant. It provides that;

> ***"30. Power to reappraise evidence and to take additional evidence***
>
> ***(1) On any Appeal from a decision of the High Court acting in the exercise of its original jurisdiction, the court may—***

(a) Re-appraise the evidence and draw inferences of fact; and

(b) In its discretion, for sufficient reason, take additional evidence or direct that additional evidence be taken by the trial court or by a commissioner."

We have borne the above principles in mind in resolving this Appeal. We consider that the logical way to proceed is to re-evaluate the evidence in regard to the offences with which the Appellant was convicted as laid out in the memorandum of Appeal.

Representation

When this Appeal came up for hearing, Ms. Brenda Kimbugwe, (Manager Prosecutions in the Inspectorate of Government) appeared jointly with Ms. Sylvia Nabirye, supervisor prosecution for the Appellant. Edward Sekamatte appeared for the first Respondent, Mr. Ivan Engoru appeared for the second Respondent, Mr. William Weere appeared for the third Respondent, Mr. Ezekiel Mubiru appeared for the fourth Respondent, Mulira Peter appeared for the fifth Respondent, Ms. Norah Kaggwa appeared for the sixth Respondent and Mr. Jimmy Muyanja appeared for the seventh Respondent.

APPEAL NO 112 OF 2018

Consideration of the Appeal

The Appellant's Appeal is against the acquittal of the first, second, fourth and sixth Respondents on one part, and against the acquittal of the third, fifth and seventh Respondents on particular counts. The

Appellant's submissions cut across all the Respondents, but each Respondent filed their separate submissions in reply.

We shall resolve this Appeal as per the Grounds of Appeal in their chronological order as applicable to each Respondent.

Ground one;

The learned trial Judge erred in law and fact when he held that the first Respondent was justified in directing Uganda National Roads Authority (UNRA), to immediately sign a contract for the upgrading of Mukono_ Kyetume-Katosi-Kisoga-Nyenga Road with EUTAW, construction company Ltd, thereby acquitting the first Respondent of the offence of abuse of office.

Appellant's submission.

Counsel submitted that for one to be convicted of the offense of abuse of office, one must be employed in a public body or a company in which Government has shares, done an arbitrary act in abuse of one's authority and such an act must be prejudicial to the interests of the employer. Counsel argued that the prosecution proved all the ingredients of the offence of abuse of office as against the first Respondent, the first Respondent having erroneously directed the second Respondent to sign the contract with EUTAW. Counsel relied on **Section 14(3)** of the **UNRA Act** which establishes the UNRA Board, that is answerable to the minister with a clear separation of roles and functions among the three centers of power namely; the minister; the board and authority.

He submitted that the minister played a role in the procurement process which was not stipulated in the Act. Counsel argued that there was too much pressure from the first Respondent, a result of which UNRA signed a contract with a company that had no capacity to construct one inch of a road. In addition, that the first Respondent acted arbitrarily when he over stepped his mandate stipulated under the law, which is limited to policy guidance, descended into operations of UNRA and directed the immediate signing of a contract for the upgrading of Mukono-Kyetume-Katosi-Kisoga-Nyenga Road between UNRA and EUTAW Construction Company Limited.

First Respondent's submission in reply

In reply, counsel submitted that the UNRA Board is answerable to the minister and that counsel for the Appellant misinterpreted the provisions of the UNRA Act in particular Section 5(3), which provides that UNRA shall be under the general supervision of the minister. Counsel submitted that the intention of the law was to create an authority with a supervisor and the first Respondent, as minister, was the supervisor of UNRA and had the mandate to direct as he did.

Counsel argued that the first Respondent did not get involved in the procurement process as alleged by the Appellant. As overall supervisor, the first Respondent was aware of all the happenings and only wrote a letter, as a supervisor, after being advised by the technical people and he found nothing preventing the Executive Director from signing the contract. Additionally, it was submitted

that the residents of the area had waited for this road for a long time and this justified the expedited actions.

The second Respondent clarified on the allegation by the Appellant that there was pressure exerted from the first Respondent which prompted the second Respondent to sign the contract and submitted that there was no such pressure. The presence of UNRA's general supervisor at the contract signing doesn't in any way confirm that there was pressure during the signing of the contact.

Court's analysis and findings on ground one

The Respondent faults the decision of the learned trial Judge in acquitting the first Respondent on grounds that he was justified in directing UNRA to immediately sign the contract with Eutaw. The basis of this finding was that the first Respondent was the supervisor of UNRA and had the mandate to direct as he did in Exhibit D3. The first Appellant was accused of abuse of office for writing a letter, exhibit D3, which directed the immediate signing of the contract.

We shall re-evaluate the evidence on record in regard to the offences with which the first Appellant was charged.

Abuse of Office

The offence of abuse of office is provided for under Section 11 (1) and (2) of the Anti-Corruption Act and provides that;

"11. Abuse of office.

(1) A person who, being employed in a public body or a company in which the Government has shares, does or directs to be done

an arbitrary act prejudicial to the interests of his or her employer or of any other person, in abuse of the authority of his or her office, commits an offence and is liable on conviction to a term of imprisonment not exceeding seven years or a fine not exceeding one hundred and sixty eight currency points or both.

(2) where a person is convicted of an offence under subsection (1) and the act constituting the offence was done for the purposes of gain, the court shall, in addition to any other penalty it may impose, order that anything received as a consequence of the act, be forfeited to the Government."

The ingredients for the offence of abuse of office are;

(a) The Appellant at the time of the commission of the alleged offence, was employed by a public body or company in which the Government has shares.

(b) The Appellant does or directs to be done an arbitrary act prejudicial to the interests of his or her employer or of any other person.

(c) The act was done in abuse of authority.

It is not in dispute that the first Appellant, at the time the alleged offences were committed, was the Minister for Transport and Works in the Government of Uganda.

The arbitrary act, alleged as in the prosecution case, was the directive by the first Appellant to UNRA to immediately sign the contract with

Eutaw. The testimony of PW1, Engineer David Ssali Luyimbazi, the Director Planning at UNRA, was that the signing of the Mukono Katosi road contract with Eutaw Construction Company was a result of the directive that was given by the first Respondent.

The prosecution alleged that the act of writing exhibit D3 directing the second Respondent to sign the contract was arbitrary because the first Respondent was aware that the identity of the contractor was questionable. Ms Sarah Birungi, the Director Legal Affairs in the Inspectorate of Government was of the view that the due diligence mission that had been commissioned by the second Respondent was supposed to clear the air but before this could be done, the first Appellant's letter directed the signing of the contract prematurely.

For this court to ascertain whether the first Appellant acted arbitrarily in writing exhibit D3, we have to consider the relationship between the first Appellant, as Minister and UNRA under the UNRA Act, 2006. The Statute creates three centers of power, the Minister for roads, the Board and the Authority under the Executive Director. Section 5(3) of the Act provides that;

"5. Establishment of Authority

(1) There is established the Uganda National Roads Authority.

(2) The Authority is a body corporate with perpetual succession and a common seal and may, for the discharge of its functions under this Act—

(a) acquire, hold and dispose of moveable and immovable property;

(b) sue and be sued in its corporate name; and

(c) do all acts and things as a body corporate may lawfully do.

(3) The Authority shall be under the general supervision of the Minister. *(Emphasis ours)*

The Statute, under **Section 14(2) (a)**, mandates the board to oversee the operations of the Authority. These two provisions mean that the Minister and the board supervise the Authority and where there is no board, the Minister interacts with the Authority directly and regularly in order to bridge the absence of the board.

We are of the view that the first Appellant's act of writing to UNRA was not arbitrary. He was exercising a mandate derived from a statute that placed UNRA, in particular the second Appellant, under his direct supervision. The contention of the prosecution is that directing the immediate signing of the contract before due diligence was concluded to clear the doubts about the identity of the contracting party was an arbitrary act.

The first Appellant, in his defence, testified that the directive to sign the contract was not arbitrary and that it was as result of the fact that the Solicitor General had cleared the contract, the legal advice from the fourth Respondent that due diligence can be done at any time coupled with the long wait for the road by residents of the area and the availability of funds for the road at that particular time.

We have critically examined the evidence of the prosecution and the first Respondent's defence. It is crucial to ascertain whether it is the correct position of the law, as the learned trial Judge found, that due diligence could be done anytime even after the contract has been signed. To begin with, **Black's law dictionary 9th edition** defines due diligence at **page 523** to mean;

"the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to a legal requirement or to discharge an obligation also termed reasonable diligence."

The learned trial Judge held as follows;

"It was submitted that since due diligence could be done anytime, there was nothing wrong with, A1 demanding for the contract to be signed as the line Minister. Regulation 31 of S. I. 2014 Number 7 provides that a procurement entity may at any time during a procurement process carry out a due diligence test on a bidder or a bid. This is the law governing procurements.

To fault A1 for writing suggesting that due diligence be done as the contract is performed would be contrary to law and cannot be a basis for sustaining criminal charges. The charges seem to stem from the fact that the securities that were presented to secure the advance payment were false. This meant that UNRA could not demand payment from the alleged guarantors. But the guilt or innocence of A1 cannot be measured against the falsity of the securities without evidence suggesting he was party to their sourcing in the course of his duties."

We are inclined to agree with the finding of the learned trial Judge. **Regulation 31** of the **Public Procurement and Disposal of Public Assets (Procuring and Disposing Entities) Regulations, 2014** provides as follows;

"31. Due Diligence.

(1) A procuring and disposing entity may at any time during a procurement and disposal process carry out a due diligence test on a bidder or a bid.

(2) A due diligence test shall cover any area of operation of a provider or any area of the bid that the procuring and disposing entity determines requires verification or checking, in exercising due care in a procurement or disposal process."

To properly evaluate when the appropriate time to carry out a due diligence test under Regulation 31, it is necessary to determine what is a procurement process. The Public Procurement and Disposal of Public Assets Act 2003 (PPDPA Act) provides an answer. Section 3 of the PPDPA Act provides as follows;

*"**procurement process**" means the successive stages in the procurement cycle including planning, choice of procedure, measures to solicit offers from bidders, examination and evaluation of those offers, award of contract, and contract management; ..."*

The procurement process therefore is the same as the "procurement cycle" which starts with planning and goes beyond the award of contract to include contract management.

It appears to us, that due diligence can be done at any time during the procurement process which goes upto contract management and as such, it was not arbitrary for the first Appellant to have written exhibit D3, directing the second Respondent to sign the contract with Eutaw Construction Company while the due diligence proceeds. The question for us to determine is at what point is the procurement process considered complete.

The first Respondent's argument is that the procurement process by UNRA did not end at the signing of the contract. The contract between UNRA and Eutaw Construction Company was signed on 15th November 2013 and by 30th December 2013, UNRA had no yet approved the 15% advance payment. On 7th November 2013, the Executive Director UNRA wrote a letter to Eutaw communicating the contract award and requesting Eutaw to provide performance security and guarantee within 28 days. This letter shows that the procurement process was still ongoing up to around 5th December 2013 and even then, the guarantees and securities had to be verified after submission. This means that the procurement process would still be ongoing after the contract signing up to the time when UNRA would approve the securities and pay the 15% advance.

By the time the first Respondent wrote the letter to UNRA to sign the contract with Eutaw, the procurement process was still ongoing and as such, due diligence could be done at any time within the process; that is the position of the law.

Of course the position of the law notwithstanding, good order and prudence would have required that due diligence as to the actual legal existence of a contractor should be done at the earliest time possible and extra care should be taken in this area before the signing of a contract.

The above notwithstanding, we accordingly find that the elements of the offence of abuse of office were not proved by the prosecution.

Ground one accordingly fails.

Grounds two and four

2. The learned trial Judge erred in law and fact when he misinterpreted the application of the principle of due diligence in the procurement process, thereby acquitting first Respondent on count 1, second Respondent on count 5, second and third Respondents on count 6 and 7, fourth Respondent on counts 8 and 9.

4.The learned trial Judge erred in law and fact when he failed to properly evaluate evidence that the fourth Respondent rendered wrongful advice on due diligence and contract signing in the circumstance, hence acquitting the fourth Respondent of the offence of abuse of office.

Grounds two and four are still in regard to the due diligence principle already determined in ground one above, but applicable to the second, third and fourth Respondents. We shall for completeness re-evaluate this said principle in respect of foresaid Respondents.

The second Appellant submitted that under **Section 7(3)** of the **Uganda National Roads Authority Act No. 15 of 2006**, the authority is obliged to comply with a direction given to it by the Minister in regard to the funding of a road project for moneys provided by parliament or any other source agreed upon by the Minister and the Authority.

Counsel argued that the second Respondent's signing of the contract ipso facto was not and could not have been arbitrary and that there was evidence on record to demonstrate that the Respondent's action was a result of a lengthy procurement process which started in 2010.

The fourth Respondent submitted that he did not conclude any due diligence process, but indicated in PEx4, the need to conclude the due diligence process and wrote a letter seeking facilitation to travel to the US and confirm the identity of the Eutaw. Counsel argued that the fourth Respondent advised UNRA to sign the contract and continue with due diligence as the entity deems necessary.

While resolving ground one, we have examined the applicability of Section 3 of the PPDPA Act and the Regulation 31 of the **Public Procurement and Disposal of Public Assets (Procuring and Disposing Entities) Regulations, 2014** with regard to due diligence and found that due diligence can be carried out at any time during the procurement process. The second Respondent simply carried out the directive of the first Respondent and the fourth Respondent, as Director Legal, advised that the contract could be signed and due diligence continues.

In acquitting the first, second, third and fourth Respondents of abuse of office, the learned trial Judge held as follows;

"I have already examined the circumstances of this procurement in respect of the actions of A1 in regard to signing the contract and found that there was nothing illegal or criminal about the decision to sign it and continue with due diligence after. This is based on the fact that due diligence is permissible under the law to be done concurrently with performance of the contract.

... The Courts have in cases such as ***Eng Samson Bagonza Vs Uganda Cr App 2 of 2010 (COA)*** *held that where an accused implements decisions taken after consultative meetings, such a person cannot be held to have acted arbitrarily or capriciously because meetings are by their nature consultative and decisions arising out of meetings are collective rather than individual. There is abundant uncontroverted evidence by Al and A2 that they held several meetings to discuss this matter. The decision to sign the contract and continue with further due diligence was a result of those meetings."*

We agree with the trial Judges' findings and therefore find no reason to depart from the findings of the learned trial Judge as re-produced above. Due diligence could be carried out at any time during the procurement process. Ground 2 also accordingly fails.

Ground three

The Learned Trial Judge erred in law and fact when he found that the first Respondent did not disobey the order of the Inspector

General of Government stopping works on Mukono-Kyetume-Katosi-Kisoga_Nyenga Road, thereby acquitting the first Respondent on count 3.

Appellant's submissions

Counsel submitted that the letter from the IGG stopping the works from going ahead was written on 17th July 2014 and hence forth, the first Respondent held high level meetings to try and salvage the situation. The outcome of the meetings was an agreement that the second Respondent writes a letter to the IGG to lift the orders of stay of implementation of the contract, which the Appellant argues, was an action of disobedience of the IGG order. Counsel argued that the letter marked DE4 was constructively received by the first Respondent and he cannot deny having received it.

First Respondents submissions

In reply, counsel submitted that the multiple meetings were not held as an outcome of the receipt of the IGG's letter, but out of concern because of the multiple problems with the project which required the first Respondent as overall supervisor of UNRA to act. Counsel argued that there were no minutes of any meetings allegedly called by the first Respondent produced by the prosecution to show the IGG's order was a subject of discussion. In addition, that the evidence produced by the prosecution did not support the claim that the first Respondent violated the orders of the IGG.

Court's analysis and findings on ground 3

The prosecution faults the decision of the learned trial Judge when he found that the actions of the first Respondent were in disobedience of the orders of the IGG stopping works on Mukono-Kyetume-Katosi-Nyenga road.

The first Respondent denied having received the letter from IGG stopping the road works. He testified that he did not receive the letter and by the time the letter was written, he was preparing to travel to China on state duties. He wrote an internal memo to Hon. Byabagambi marked D4, leaving him in charge of the Ministry for the time he would be away and directing him to see that the road works continue. He categorically stated that he did not write this letter in defiance of the IGG order and further, that there was no evidence that Hon. Byabagambi received exhibit D4 or acted on it.

The evidence of PW22, Lisa Mwagale, a Senior Inspectorate Officer at the office of the Inspectorate of Government, was that CICO, the company that had been sub-contracted by Eutaw was waving exhibit D4 to justify continuation of the road works. We however have noted that exhibit D4 was an internal memo and there was no evidence produced by the prosecution to the effect that the addressee of the letter acted on it. The prosecution also failed to adduce evidence of Matilda who is said to have received the copy of the IGG's letter marked exhibit P130 thus weakening the prosecution case.

Niu Hong, a Chinese national and manager of Cinghcho International Construction Corporation (CICO), testified as PW8, ENG. NUO HONG, and stated that he got D4 from one Michael Fiaco and that it was an internal letter not copied to CICO. Failure to adduce evidence of Michael Fiaco to explain where and from whom he got the copy of a letter not copied to him rendered the prosecution allegations mere hearsay. Convicting the first Respondent for disobeying an order without evidence that he received it would be speculative and as rightly found by the learned trial Judge, falls short of the standard of proof required in criminal cases.

The prosecution produced evidence that an order stopping the road works was issued, but did not prove to the court that the same was served upon the first Respondent. He cannot be held to have disobeyed an order not served upon him. His testimony that he never received the letter, that it was merely copied to him and that the said Matilda who received it was not his secretary creates reasonable doubt in the case against him. It is trite law that any reasonable doubt in a criminal trial is resolved in favour of the accused person.

Ground 3 also accordingly fails.

Ground 5: The learned trial Judge erred in Law and fact when he found that the Appellant did not prove the offence of causing financial loss, there by acquitting the second and third Respondents on count 6, fourth Respondent on count 8, third and seventh Respondents on count 10, sixth Respondent on count 23.

Ground 7: The Learned Trial Judge erred in Law and fact when he did not make any orders for compensation against the Fifth Respondent.

Appellant's submissions

Counsel submitted that the learned trial Judge erred in finding that the offence of causing financial loss had not been proved because there was no engineering audit report to guide on the value of work that was actually done. Counsel submitted that the contract under which UGX 24,790,823,522/= was paid out was void ab initio and anything paid under it constituted financial loss to government. Counsel argued that UNRA ended up signing a contract with a company which had not bided and had no connection with the successful bidder.

Counsel argued that PW4, the project manager, testified that the works done could be valued at UGX 5.8 billion and as such, the advance paid to Eutaw should have been deducted from the works done and hence financial loss.

Respondents' submission

The second Respondent's counsel submitted that there was no financial loss occasioned on the Government for reasons that the advance payment was made against the project manager's (DW4's) confirmation that he had checked and confirmed that the contractors' request for advance payment was in line with the procurement procedure. The responsibility to ensure that the bid

securities conformed to the contract terms was not the responsibility of the second Respondent.

Counsel submitted that the third Respondent was not part of the bidding, tendering and due diligence process and could not have caused financial loss on the Government. The contention that the contract works so far carried out were worth UGX 5.8 billion as stated by the Appellant was an estimation made by counsel from the bar and was not, as was found by the trial Judge, backed by any evidence. Counsel argued that proof of loss of a particular amount is a material ingredient to the offence of causing financial loss and failure to provide the evidence in that regard was short of proof of the offence.

It was submitted for the fourth Respondent that there was no conclusive report or audit indicating the suns that are said to have been caused to be lost, as is alleged by the prosecution.

Court's analysis and findings on Grounds 5 and 7

The offence of causing financial loss is provided for under Section 20(1) of the **Anti-Corruption Act** and it reads;

"20. Causing financial loss.

(1) Any person employed by the Government, a bank, a credit institution, an insurance company or a public body, who in the performance of his or her duties, does any act knowing or having reason to believe that the act or omission will cause financial loss to the Government, bank, credit institution

commits an offence and is liable on conviction to a term of imprisonment not exceeding fourteen years or a fine not exceeding three hundred and thirty-six currency points or both."

The ingredients for the offence of Causing Financial Loss are;

(a) The accused (in this case Appellant) at the time of the commission of the alleged offence, was employed by the Government or a public body.

(b) The accused/Appellant did an act or omitted to do an act which they reasonably believed or knew would cause financial loss to their employer.

(c) Financial loss occurred to accused's employer.

The ingredients of this offence that is subject to this appeal is proof of financial loss having been caused to UNRA. The Appellant's case is that the Respondents should have been found guilty of causing financial loss for approving and causing payment of UGX 24,790,823,522/= while aware of the negative identity issues of Eutaw contained in the preliminary due diligence report marked Exhibit P8. The prosecution contends that the two had knowledge or reason to believe that such approvals of payment would cause financial loss to government. The prosecution case is that the Respondents should not have endorsed the advance payment until the final due diligence report had been made.

It was the contention of Respondents that there was no proof of actual loss because some work had been done on the road before the IGG stopped the contract. This, in essence, means it cannot be true that UGX 24,790,823,522/= was lost considering the evidence of PW22, the investigating officer and PW8, Eng. Nuo Hong, the CICO contractor on the ground agree that some work was done on the road but was not valued. This would mean that there was no evidence to determine the actual loss.

The learned trial judge, in determining the evidence produced to prove the offence of causing financial loss held as follows;

"What, therefore, was the actual loss? There is no definite answer in absence of an engineering audit report. The prosecution seems to suggest that the whole 24,790,823,522= was lost yet it adduced evidence that road works to the value of between 5.8 and 6.1 billion was done. That would mean the loss is less than 24.7 billion.

... Applying the standards set in the foregoing cases, it is clear that evidence must be adduced to quantify the loss and prove that the loss is not recoverable. Financial loss has, therefore, not been proved in this and other counts drafted in similar fashion as I will indicate later on in this judgment. The prosecution should have commissioned an engineering audit of the road works or obtained and led evidence from the contract supervising consultant to establish the actual value of work done. It is the actual value of work done plus assets if any, minus the advance payment that would establish the actual loss. Loss is that value that is not recoverable by any measures considering that fake

securities were used. Ms Birungi submitted that as long as there is evidence of loss then loss is proved. With respect to learned counsel, I am unable to accept that argument for two reasons.

The first is that the charges speak of loss of 24,790,823,522= yet evidence adduced shows that it's less than that. If evidence adduced is contrary to the charges in court then the case is not proved beyond reasonable doubt. The variance creates doubt which is resolved in favour of the accused."

We are of the considered view that the finding of the learned trial Judge in the above excerpt was well reasoned and we find no reason to depart from it. Incredibly, the prosecution failed to produce any evidence of the actual loss occasioned to Government. The prosecution witnesses presented various sums such as UGX 5.8 to UGX 6.1 billion out of UGX 24.7 billion. PW4 (Eng Olwa), PW8, (Eng Nuo Hong) and PW22, Ms. Mwagale, the investigating officer, presented UGX 6.1 billion as the value of work on the ground.

In **Kassim Mpanga V Uganda Cr App 30 of 1994,** the Supreme Court adopted the plain meaning of loss to refer to something that reasonable search cannot recover. This would mean that the loss occasioned has to be specific or ascertained to as to find financial loss. We find that the element of loss occasioned was not proved and uphold the decision of the learned trial Judge acquitting the second, third, fourth, fifth, sixth, and seventh Respondents of the offence of Causing Financial Loss.

Consequently, a compensation order could not be made on an amount that was not ascertained by the prosecution against the 5th Respondent. There was also evidence that the 5th Respondent paid out UGX 12.2 billion to CICO to start the works on the road and UGX 4.6 billion paid out to a US account for purposes of importing machinery. The prosecution did not discharge its duty which easily could have been done by producing an engineering audit report to ascertain the loss caused. This would have been a basis for the court to make a compensation order as against the 5th Respondent.

Ground 5 accordingly fails.

Ground 6: The learned trial Judge erred in Law and fact when he failed to properly evaluate evidence and concluded that the Appellant did not prove conspiracy between the fifth and sixth Respondents, thereby acquitting both on count 22.

Appellant's submissions

Counsel submitted that the evidence of PW10 (Dorothy Nsekakiyaga, the General Manager – Internal Audit in Housing Finance Bank, PW11 (Moses Mbabazi Ntare, the IT Auditor in Housing Finance Bank and PW22 (the IGG Investigating Officer) was to the effect that the sixth Respondent sent a blank headed paper of Housing Finance Bank to a private email on the 28th of October 2013 and this should have been the same headed paper that was used by the 5th Respondent to make fake Housing Finance Bank guarantees. The evidence of PW13 was that when she interacted with the 5th

Respondent at his office in Bukoto, he downloaded Housing Finance Bank guarantees direct from his computer.

Counsel argued that based on this evidence, there was a conspiracy agreement between the fifth and sixth Respondents and that the two should have been convicted of the offence of conspiracy to deprive UNRA of the UGX 24,790,823,522/=.

Respondents submissions

In reply, counsel for the sixth Respondent submitted that the evidence of PW11, the IT Auditor at Housing Finance Bank) that emails can't be edited was contradictory to the evidence of PW22 who testified during cross examination that the emails in Exhibit P115 were edited and were visually recognizable. PW11, who had earlier sworn to the authenticity of the emails testified and faulted the IT Security manager for the alterations. Counsel relied on Section 29(3)(a)(b) of the Computer Misuse Act, 2011 to the effect that when assessing the evidential weight of a data message or electronic record, the court shall have regard to the reliability of the manner in which the data message was generated and reliability of the manner in which the authenticity of the data message was maintained. Counsel argued that the prosecution had the duty to prove authenticity, which was not done in this case.

Counsel submitted that the testimony of the sixth Respondent in regard to the bank headed paper was that he requested for headed paper from the branch operations manager to recommend one Mwigule Johnson, a sales representative that he supervised while at

Housing Finance Bank and she gave him a scanned copy because every hard copy had to be accounted for.

Consideration of Ground 6

The fifth and sixth Respondents were charged with conspiracy to defraud the Government of UGX 24,790,823,522/=.

Conspiracy to Defraud is provided for under **Section 309** of the **Penal Code Act** and it provides that;

"309. Conspiracy to defraud.

Any person who conspires with another by deceit or any fraudulent means to affect the market price of anything publicly sold, or to defraud the public or any person, whether a particular person or not, or to extort any property from any person, commits a misdemeanor and is liable to imprisonment for three years."

The ingredients of the offence of conspiracy to defraud are;

1. An agreement between two or more persons.
2. By deceit or fraudulent means,
3. Defraud a particular person of any property.

The prosecution case is that there is circumstantial evidence to the effect that the friendship between the fifth and sixth Respondents resulted into an agreement to defraud Government of the above funds through fraudulent means. The fifth and sixth Respondents admitted

interacting in an official manner of customer and banker relationship and denied conspiring to defraud.

The sixth Respondent testified that he joined KCB in 2012 after the exhibits P117 and P118 had been made and received at UNRA. The investigation by the IGG did not retrieve his appointment letter at KCB as it did for the appointment at Housing Finance Bank Ltd. It was submitted for the sixth Respondent that the electronic mails relied upon to connect him to the crime are suspect because they don't have the lP address of his computer. The sixth Respondent testified that when his computer was examined, it was clean of the alleged electronic mails. The third and seventh Respondents also testified that the electronic mail addresses attributed to them from the sixth Respondent contain upper case letters which they do not use at UNRA.

It is our considered view the prosecution evidence against the sixth Respondent for the offence of conspiracy was insufficient to sustain a conviction. The electronic mails contained in Exhibit P53 could not be used to establish whether indeed the sixth Respondent communicated with the third and seventh Respondents since there was no examination of the UNRA servers. The investigating officer should have done more investigations on the Housing Finance Bank and UNRA exchange computer servers to generate credible digital forensic data.

The electronic mails contained in exhibits P53 and P115 were testified to have been modified by editing and the screen shots in

Exhibit P115 appear to be edited in word document format to type the headings. Under **Section 29(3) (a) (b)** of the **Computer Misuse Act, 2011,** the reliability of the manner in which the data message was generated and the reliability of the manner in which the authenticity of the data message was maintained is key. Clearly, Exhibit P115 appears to have been tampered with in as far as the screen shots were concerned.

Conspiracy refers to an agreement between two or more persons to commit an unlawful act or to use unlawful means to achieve a lawful purpose. Conspiracy to Defraud occurs when two or more individuals agree to engage in fraudulent activities, even if the fraudulent act itself is not completed. This element of conspiracy to steal UGX 24,790,823,522/= was not proved as against the fifth and sixth Respondents beyond reasonable doubt. The fact that the fifth Respondent knew the sixth Respondent while he worked at KCB Bank is inconsequential to the prosecution evidence. The sixth Respondent testified to have provided the fifth Respondent with the necessary information required to open an account and helped him do so as a relationship manager. This does not in any way prove conspiracy to defraud.

We accordingly uphold the decision of the learned trial Judge to acquit the fifth and sixth Respondents of the offence of conspiracy to defraud.

In resolving this Appeal, we shall address each of the Appellant's Appeals independently, considering that the Appellants filed different Memoranda of Appeal. We shall start with the first Appellant.

Representation

When this Appeal came up for hearing, Mr. William Weere appeared for the first Appellant, Mulira Peter appeared for the second Appellant, Mr. Jimmy Muyanja appeared for the third Appellant. For the Respondent, Ms. Brenda Kimbugwe, (Manager Prosecutions in the Inspectorate of Government) appeared jointly with Ms. Sylvia Nabirye, supervisor prosecution. Both parties filed their written submissions which they adopted as their legal arguments.

First Appellant: JOE SEMUGOOMA

Grounds 1, 2 and 3

1. The Trial Judge erred in Law when he failed to property evaluate the evidence on the court record thereby reaching a wrong decision.
2. The trial Judge erred in law and fact when he considered and believed the Prosecution case in isolation of the Defence case.
3. The trial Judge erred in law and fact when he convicted the Appellant on circumstantial evidence which was too weak to prove any of the counts.

Grounds 1, 2 and 3 fault the learned trial Judge for having convicted the Appellant basing on the prosecution evidence, which the Appellant claims was circumstantial.

The first Appellant was charged and convicted of the offences of Abuse of office c/s. 11 (count 7) and Corruption c/s. 2(i) (count 11) of the Anti-Corruption Act.

Appellant's submissions

The first Appellant's counsel argued grounds 1 and 2 concurrently and submitted that in convicting the first Appellant, the learned trial Judge relied on the meeting of 07th January 2014 and the letters written by the first Appellant. The trial Judge concluded that verification of guarantees was the duty of the first Appellant, which duty was not carried out and thus omitted to perform a very critical function of his directorate. Counsel relied on the evidence of PW1, Eng. David Ssali Luyimbazi and PW22 (investigating officer) who testified that the third Appellant was responsible for verification of securities. He also relied on the testimony of PW10 (Dorothy Nsekakiyaga) who testified that security verification emails originating from the Bank's server and being sent to UNRA were found to have been exchanged between Mugote Isaac, the sixth Respondent in Criminal Appeal No. 112 of 2018 and Wilberforce Senjako, the third Appellant in this Appeal. Further, that there was no evidence linking the first Appellant to the bank official.

Counsel submitted that after acknowledgment by the trial Judge, that the verification letters were prepared by Wilberforce Senjako and

given to the first Appellant to sign, and the witnesses having confirmed that the first Appellant carried out his duties, it was an error for the trial Judge to proceed and find that the first Appellant had neglected to perform his duties.

Counsel relied on the testimony of PW10, the General Manager Internal Audit, Housing Finance Bank in which Wilberforce Senjako admitted that the headed papers used for the securities and verification letters came from the Bank and this was facilitated by the Bank staff. PW10 and PW9 confirmed that the emails came from the Bank and were taken to UNRA. Dorothy Nsekakiyaga (PW10) further testified that the Bank disclaimed the Confirmation Letter after checking the Stamps Register. Counsel contended that it was not within the power of the first Appellant to identify the signatures and stamps of the Bank after receiving confirmation from the UNRA action officer that the confirmation was received from the Bank. Counsel argued that it was not possible for the first Appellant to know by whom and how the Bank would issue the confirmation letters as these were internal bank practices.

Counsel submitted, while arguing ground 3, that the Appellant and the Chief Accountant were omitted in the process of payment and they did not get an opportunity to review the documentation prior to the payment. In addition, the first Appellant testified that emails were sent to the Bank to stop payment, but the Bank ignored these emails and none of the Bank witnesses disclosed this information. Counsel argued that neglect, under Section 2(i) of the Act is an essential

ingredient in respect of which the circumstantial evidence was not sufficient to prove neglect.

Respondent's submissions in reply to grounds 1, 2 and 3

Counsel submitted that in the course of trial, the first and third Appellants kept trading accusations against each other and from the testimony of the third Appellant, Senjako Wilberforce, it was the work of the first Appellant to verify the securities. The first Appellant also testified that it was the duty of the third Appellant to verify the securities. Counsel argued that the first Appellant signed PE129, addressed to Housing Finance Bank seeking verification of the securities sent to him from the Procurement Unit. On 23rd December 2013, the third Appellant addressed the email to the CEO of Housing Finance Bank but instead sent the email to Isaac Mugote, the sixth Respondent in Criminal Appeal No. 112 of 2018. However, the first Appellant was copied in this email and was also copied in the reply from the Bank to UNRA. It is on this background that the Respondent's counsel submitted that the first Appellant knew that these securities were not verified by the CEO of Housing Finance Bank.

Counsel argued that it was on the basis of this evidence that the first Appellant was convicted of Abuse of Office and Neglect of duty, for reasons that he was aware of what was going on between him, the third Appellant and Isaac Mugote. The learned trial Judge relied on circumstantial evidence to convict the first Appellant, even though he did not participate in the final payment process before the money was

credited onto Eutaw account in Housing Finance Bank. Counsel argued that it was the duty of the first Appellant, being Director of Finance and administration, to superintend over the verification of the securities in issue and to supervise the entire process, which he neglected to do.

Counsel submitted that UNRA had previous dealings with Housing Finance Bank and therefore, UNRA was conversant with the procedures of verification of securities with the Bank. That the third Appellant sent an email to Isaac Mugote asking him to verify if the Bank securities were genuine yet the email was addressed to the CEO of Housing Finance Bank. Counsel argued that *mens rea* was proved as against the first Appellant, having failed to verify the securities and hence exposing UNRA to serious risks.

Court's analysis and findings on grounds 1, 2 and 3

The first Appellant was charged and convicted of two counts, count 7- Abuse of Office C/s 11 of the Anti-Corruption Act, 2009 and Count 11- Neglect of duty.

Abuse of Office

The first Appellant was convicted of Abuse of Office c/s 11 of the Anti-Corruption Act, 2009.

The offence of abuse of office is provided for under **Section 11 (1)** and **(2)** of the **Anti-Corruption Act** and provides that;

"11. Abuse of office.

(1) A person who, being employed in a public body or a company in which the Government has shares, does or directs to be done an arbitrary act prejudicial to the interests of his or her employer or of any other person, in abuse of the authority of his or her office, commits an offence and is liable on conviction to a term of imprisonment not exceeding seven years or a fine not exceeding one hundred and sixty eight currency points or both.

(2) where a person is convicted of an offence under subsection (1) and the act constituting the offence was done for the purposes of gain, the court shall, in addition to any other penalty it may impose, order that anything received as a consequence of the act, be forfeited to the Government."

The ingredients for the offence of abuse of office are;

(a) The Appellant at the time of the commission of the alleged offence, was employed by a public body or company in which the Government has shares.

(b) The Appellant does or directs to be done an arbitrary act prejudicial to the interests of his or her employer or of any other person.

(c) The act was done in abuse of authority.

On the first ingredient, it is not a disputed fact that the Appellant was, at the time the offence was committed, employed by the Uganda Government as a Director Finance and Administration in Uganda National Roads Authority (UNRA).

The prosecution has the burden to prove that the first Appellant did or directed to be done an arbitrary act prejudicial to the interests of his employer and the act was done in abuse of his authority. The prosecution case was that the first Appellant committed the offence by approving and causing payment of UGX 24,790,823,552/= before ascertaining the identity of the contractor and verifying the securities.

Mr. Peter Kirimunda, the Director of Internal Audit in UNRA at the time testified as PW3. He testified that he was part of the due diligence team and later on received payment documents after the contract had already been signed. The documents he received included requisition for projects, requisition from Eutaw requesting the payment, it included a guarantee from Housing Finance Bank, verification of the guarantee by the same Bank and the contract which was already signed. There was a letter from the first Appellant, the Director Finance and Administration, stating that the guarantee had been verified by Housing Finance. PW3 then received a requisition raised from the Directorate of Projects by the Project Manager, one Martin Olwar. PW3 however sent back the document stating that the Minister directed that a due diligence should go

ahead on this particular provider and that payment should only be made after the due diligence report was out.

The first Appellant wrote to PW3 stating that "*Following the meeting held in the Acting ED's office on the seventh January 2014 at 4.30pm it was agreed that both payment and due diligence go ahead concurrently. I now return this document to you*".

PW3 called the first Appellant seeking clarification of this and was told that the contract had already been signed and that the signing of the contract created a legal obligation for UNRA to pay the advance payment, short of which this will cause legal problems being that the contractor is entitled legally to get that money. He then proceeded to effect payment.

With regard to the verification of the securities, PW3 testified that verification of securities was done by the Directorate of Finance and Administration. After the securities have been tendered, the Director Finance and Administration would write to the issuing entity giving details of the security given and the entity would write back confirming that they actually issued the security in question.

The evidence of PW4, Olwa Martin, is also pertinent to the issue of verification of the securities. PW4 was employed with UNRA at the time as Project Engineer and had been appointed Contract Manager/Project Manager for the upgrading of Mukono Kyetume/Kisoga Nyenga Road in December 2013 by the Director Projects Engineer, James Okello.

Eng. Olwa (PW4) was involved in the payment of advance to the contractor at the commencement of the work. He testified that he received a request by the contractor, authored by Richard Pratt, asking for advance payment in his letter dated 23rd December 2013. Upon receipt of the request, PW4 looked through the documents related to payment of advance. Amongst the documents was advance payment bond from Housing Finance Bank dated 23rd December 2013, signed by Kansiime Nyende Mary, Head Corporate Banking. PW4 also got a verification letter from Housing Finance Bank dated 24th of December 2013. There was also a performance bond which was written to Uganda National Roads Authority of UGX l6 billion issued by Housing Finance Bank and authored by Katusiime Mary Nyende, Head Corporate. On the 30th December 2013, Eng. Olwo (PW4) prepared a memo addressed to Acting Executive Director through Director Finance and Administration through Acting Director Projects indicating that he had received the documents, studied them and agreed that advance payment of 15% worth UGX 24,970,823,522/= can be processed.

Among the documents PW4 received, was a verification of security dated 4th December 2013 written to UNRA signed by Kansiime Mary Nyende.

We shall also re-evaluate the evidence of PW22, Lisa Mwangale, a Senior Inspectorate Officer with the office of the IGG and was the investigating officer in this case. She testified that there was a letter dated 23rd December 2013, written by the Director Finance and

Administration to Housing Finance Bank. The Director was Mr. Joe Semugooma, the first Appellant. He was writing to the bank seeking their verification of the advance payment guarantee. A response was received from Housing Finance Bank confirming that the advance payment guarantee was genuine.

PW22 testified further that on the 24th December, Mr. Wilberforce Senjako, an Accountant in the Finance Directorate of UNRA sent an email to an employee of Housing Finance Bank called Isaac Mugote. Mr. Senjako had addressed the email to the CEO of Housing Finance Bank and he was highlighting the fact that there were several forgeries of securities and as a mitigating factor, UNRA had started a system of requesting CEO's to confirm the securities and to re-confirm the verification letter. This email had been copied to Mr. Joe Semugooma, the Director of Finance and Administration. On the same date the third Appellant, Mr. Wilberforce Senjako received an email from Mr. lsaac Mugote confirming that the securities were authentic. This email was also copied to the first Appellant. Mr. Joe Semugooma then wrote a memo to the Head PDU in which he stated that the securities from Housing Finance Bank had categorically authenticated the securities.

It is important to re-evaluate the evidence of the prosecution witnesses and the defence with regard to verification of the securities because this was the basis of the first Appellant's conviction for the offence of Abuse of office. The arbitrary act alleged to have been committed by the first Appellant was failure to verify the securities

that had been received from Housing Finance Bank, as Director Finance and Administration at the time.

In his defence, the first Appellant testified that verification of securities was vested in the department of Finance and Accounting and would be done either by a letter to the financial institution, telephone call or by email. The department of finance was headed by the Chief Accountant. What amounted to proper verification depended on the assessment of the Chief Accountant or his accountant who would decide what method to use. In this particular case, the first Appellant testified that he found a letter drafted by the Accountant in charge of verification, for his signature addressed to Housing Finance Bank seeking verification of the securities. The first Appellant signed it and it was returned to the Chief Accountant. A response was sent to UNRA and was brought to the attention of the first Appellant verifying the securities. He in turn sent it to the Directorate of Projects with a memo communicating that the securities had been verified.

In his testimony, the first Appellant indicated that verification of these securities was done at two levels, one by Finance and Administration and the other by Internal Audit. After receiving the conformation from the Bank, the first Appellant sent the documents to Internal Audit.

The learned trial Judge held as follows;

> *"While the decision to pay and do due diligence concurrently was a group decision by top management and the contracts*

committee, the verification of the security which turned out to be false verification was the responsibility of A3 as head of finance and A7 as action officer.

These two failed in their duties and exposed their employer to prejudice. There was no verification of the security from Housing finance bank. lf it had been done, this matter would not be in court. The payment would not have been made.

A3 acted unreasonably or deliberately gave a false assurance to allow the contractor dodge paying for the guarantee because a bank guarantee attracts interest. A3 abused the authority of his office by writing a false letter to release a payment of UGX 24,790,823,522=. That was criminal for a director of finance to do."

With the greatest of respect, we do not agree with this finding of the learned trial Judge. As already noted above, the first Appellant discharged his duty and signed the letter requesting for verification of the securities drafted by the Regional Accountant. The letter was responded to by Housing Finance Bank confirming that the securities were authentic. We cannot blame the first Appellant for in-house errors in Housing Finance Bank. The request for verification was responded to by one Mary Katusiime, the Head Corporate in Housing Finance Bank. Without doubt, verification of the securities submitted by a contractor is one of the most important steps in the contract process prior to effecting any advance payment.

The first Appellant discharged his duty, as Director Finance and Administration, when he signed the letter presented to him by the Regional Accountant seeking verification of the securities. It was not his duty to deliver the letter to the concerned office at the Bank. He testified, alongside other prosecution witnesses, that the Directorate had registries duty bound to deliver correspondences in and out of UNRA. We agree with the learned trial Judge when he noted that the Chief Accountant, Mr. John Mpanga, should have been brought to court as a witness on the issue of verification of the securities.

In our view, the prosecution did not prove the elements of an arbitrary act prejudicial to an employer as against the first Appellant.

In the case of **DPP VS Oscar Leonard Carl Pistorius Appeal No. 96 of 2015 [2015] ZASCA 204 (3 December 2015),** it was held that;

> *"The proper test is that an accused is bound to be convicted if the evidence establishes his [her] guilt beyond reasonable doubt, and the logical corollary is that he [she] must be acquitted if it is reasonably possible that he [she] might be innocent."*

The decision in **Justine Nankya v. Uganda SCCR Appeal No. 24 of 1995 (Unreported)** citing with approval **Okoth Okale v. R. (1955) E.A. 555** emphasizes, among others, that an accused has no obligation to prove his innocence. Even where he or she opts to keep quiet throughout the trial or offers a very incredible defence, he or she can only be convicted upon the strength of the prosecution case against him or her. This means that before an accused is

convicted the trial judge has to see to it that the prosecution has proved its case to the required standard. This was not done.

We thus find that the trial Judge erred in finding that the offence of abuse of office was proved.

Neglect of duty

On count 11, the first Appellant was charged with Corruption contrary to Section 2(a) of the Anti-Corruption Act, 2009, but was convicted of neglect of duty.

The prosecution case was that the first Appellant had a duty to verify securities which he neglected to perform as a result of which Government lost money to a company that had obtained advance payment against invalid securities.

Section 2(1) of the **Anti-Corruption Act, 2009,** defines "neglect of duty" as an offence, which is the failure to carry out official duties properly, or any act or omission in the discharge of a public official's duties to illicitly obtain benefits for oneself or a third party. This provision criminalizes the failure of a public official to perform their duties, which results in damage or prejudice to the state or a public body.

The first Appellant's counsel submitted that whereas neglect of duty is a strict liability offence, this court ought to distinguish between neglect of duty under the Anti-Corruption Act *vis a vis* the Penal Code Act, with regard to the element of *mens rea.* Under the Anti-Corruption Act, 2009, the offence of neglect of duty is not classified

as a strict liability offence. This means that for a conviction, the prosecution must establish that the accused had a duty to perform, neglected that duty, and that this neglect was accompanied by the necessary *mens rea* (guilty mind). This court has determined this issue in **Mugisha v. Uganda (Criminal Appeal No. 104 of 2011) 2019 UGCA 149 (17 June 2019).** Court held that neglect of duty is not a strict liability offense and emphasized that to secure a conviction for neglect of duty, the prosecution must prove:

1. The accused had an official duty.
2. The accused neglected this duty.
3. This neglect resulted in prejudice to the complainant.

The official duty in this regard was verification of the securities that had been submitted by Eutaw Construction from Housing Finance Bank. The learned trial Judge;

> *"Both, A3 and A7 are qualified accountants. They are educated professionals who chose to look the other way to allow Eutaw construction company obtain advance payment using fake securities obtained from the streets of Kampala. The two neglected their duty of care to their employer and caused a huge risk of paying out billions of shillings without security. It is strange that A3 who said it was his duty to sign all letters going out of the directorate would sign exhibit P131 which confirmed the securities without checking to find out if he had sent out the original request for verification."*

This finding was, in our view, an error on the part of the learned trial Judge with regard to the first Appellant. We have already re-evaluated the evidence on record and found that the first Appellant discharged his duty and signed the letter requesting for verification of the securities as drafted by the third Appellant who was the Regional Accountant. The letter was responded to by Housing Finance Bank confirming that the securities were authentic. We cannot fault the first Appellant for writing P.131, which confirmed that the securities had been verified, after receiving a response from the Bank confirming verification. In addition, the General Manager-Internal Audit, Housing Finance Bank (PW10) testified that during the investigations, it was confirmed that the email of confirmation of the securities sent to UNRA came from the server of Housing Finance Bank.

The prosecution had a duty to prove that the first Appellant neglected his duty to verify the securities, which was not done. In prosecuting an offence of neglect of duty under the Anti-Corruption Act of 2009, the burden of proof lies with the prosecution to establish beyond a reasonable doubt that the accused had a legal duty to perform, failed to carry out that duty, and that this failure amounted to criminal neglect. The prosecution must demonstrate that the first Appellant was aware of their obligation and that their inaction or omission was intentional, reckless, or grossly negligent, rather than a mere mistake or oversight. Even though the evidence relied upon by the learned trial Judge was circumstantial, the law requires proving both the act of neglect and the guilty mind or intent behind the neglect. Without

sufficient evidence of these elements, the first Appellant cannot be lawfully convicted, as the law does not presume guilt without proof.

It is trite law that for circumstantial evidence to be sufficient, it must be strong, consistent, and lead to only one logical conclusion—that the first Appellant deliberately or negligently failed in their duty. Such evidence must be so compelling that it excludes any reasonable explanation other than guilt.

In **Simon Musoke Vs R [1958] EA 715:-** the East Africa Court of Appeal held that;

"in a case depending exclusively or partially upon circumstantial evidence, the Court must before deciding upon a conviction find that, the inculpatory facts are incompatible with the innocence of the accused and incapable of explanation upon any reasonable hypothesis than that of guilt."

See also Teper v. R. (2) AC 480 which held,

"it is necessary before drawing the inference of the accused's guilt from the circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference."

It is our considered view that without credible evidence establishing the elements of the offence of neglect of duty as against the first Appellant, convicting him would amount to a miscarriage of justice. Grounds 1, 2 and 3 of the first Appellant's Appeal accordingly succeed.

Having found in favor of the first Appellant on grounds 1, 2 and 3, we find no reason to resolve the remaining grounds on the sentence passed by the trial court.

We accordingly set aside the judgment and orders of the trial court, as far as the first Appellant is concerned, and order for the first Appellant's immediate release unless he is held on other lawful charges.

SECOND APPELLANT: APPOLLO SENKEETO alias KALYESUBULA MARK

Ground one:

The learned trial Judge erred in law and fact when he failed to evaluate the evidence on record as a whole and thereby failing to resolve glaring contradictions in the Appellant's favor. He held that the Appellant stole the sum of 24,790,823,522/= (Twenty-Four Billion Seven Hundred and Ninety Million three thousand five Hundred and twenty-two Uganda Shillings) when he found as a fact that 12,000,000/= (Twelve Million shillings) was paid to CICO Uganda, 4,500,000/= (Four Billion Five Hundred Thousand) was paid to Eutaw Construction Company, Inc. in the United States and an unspecified amount purchased twelve vehicles and equipment for the Katosi Road Construction.

The court, on its own motion, has noted that Ground one of the second Appellant's Memorandum of Appeal is argumentative and narrative, which contravenes **Rule 86** of the **Court of Appeal Rules**.

Rule 86 (1) of the **Judicature (Court of Appeal Rules) Directions SI 13-10** provides;

> *"86. Contents of memorandum of Appeal.*
>
> *(1) A memorandum of Appeal shall set forth concisely and under distinct heads, without argument or narrative, the grounds of objection to the decision Appealed against, specifying the points which are alleged to have been wrongfully decided, and the nature of the order which it is proposed to ask the court to make."*

This ground exceeds the limits of conciseness required by the rule, as it includes detailed arguments and explanations that should instead form part of the Appellant's submissions.

While the Respondent did not raise an objection on this issue, the court is obligated to ensure compliance with procedural rules. Drawing guidance from **Sukuton Ali v Kapkwonyongo & Ors (Civil Appeal No. 117 of 2012)**, where the Court of Appeal stressed the need for grounds of Appeal to be succinct and free of argumentation, this court finds that the ground in question must be struck out for not conforming to the procedural requirements.

Grounds 2, 3, 4, 5, 7 and 9

The second Appellant argued grounds 2, 3, 4, 5, 7 and 9 concurrently and as such, we shall consider them in the same format.

Second Appellant's submissions

Counsel submitted that throughout the trial, there was no single prosecution witness that gave evidence against the second Appellant and that there was no complainant against him. He argued that at the end of the prosecution's case, they submitted through the evidence of PW22, that the Complainant was the commissioner of Patriotism in the office of the president who made a complaint to the IGG to the effect that the award of tender of Mukono Katosi Road to MS. Limited appears dubious. Counsel submitted that the trial judge requested the prosecution to bring the Commissioner of Patriotism before Court but this was not done. His argument was that the complainant in a case such as this should have been Eutaw to complain that one of their employees had stolen money from their bank account without the requisite permission. In this case, the money was paid to Eutaw pursuant to a valid contract and the money was received to the Eutaw bank account from where it was disbursed. The second Appellant could not have stolen the money from the consolidated fund.

Counsel argued that the only other complainant could have been UNRA who could have complained against Eutaw for stealing their money and uttering false documents. However, UNRA itself signed the contract, verified the securities and dully approved payment of the money in accordance with all the legal requirements. He submitted that if indeed the IGG was the complainant as the trial Judge held, this would mean that the IGG was not only the

complainant, but also the investigator and the prosecutor against the second Appellant. This would contravene the principles of Natural Justice and fair hearing enshrined in Article 28(12) of the Constitution.

Counsel submitted further that the prosecution alleged that the Appellant stole money, the property of the Government of Uganda, but the Government cannot be the complainant since the contract under which payment was made by UNRA was sanctioned by the Solicitor General after being satisfied that the procedure laid out in the Public Procurement and Disposal Act had been followed by the contracts committee appointed by UNRA.

Counsel argued that the IGG could not legally prosecute the Appellant under the penal Code Act without authorization of the DPP for reasons that the second Appellant was not an employee of the Government. In addition, that the indictment signed by the prosecutor was illegal because it was not signed by the IGG nor was it authorized by the DPP. Counsel relied on the decision in **Hon. Sam Kuteesa & 2 Ors v Attorney General (Constitutional Reference No. 54 of 2011 [2012]**, for the proposition that an indictment brought by the Inspectorate of Government must be signed by the Inspectorate of Government as a composite body and not by any one individual member of the Inspectorate.

Counsel submitted that there was no evidence that the second Appellant was the author of the documents alleged to have been presented and the evidence on record does not connect the Appellant

to Eutaw (Mississippi), as was held by the trial judge. The second Appellant was acting on behalf of Eutaw construction company of Florida and there is a letter stating he had no authority to negotiate on behalf of the company, but was only a courier. Counsel argued that while it is true that the bidder was Eutaw (Mississippi), it was Eutaw(Florida) which was awarded the contract and the evidence on record clearly shows that with permission of Eutaw (Mississippi), EUTAW (Florida) used the former's experience to win the contract as its special purpose vehicle company. That the learned trial judge failed to appreciate the true meaning and import of a special purpose vehicle company and found that there was fraud involved.

Counsel submitted that the second Appellant should not have been convicted of theft of UGX 24.7 billion shillings yet the money was paid for mobilization only and not for the execution of the works and there is evidence to show that mobilization was completed and over UGX 33 billion shillings of works was executed on top of the mobilization as per Exh. D24, which is an audit report prepared by UNRA acknowledging that mobilization was completed and works valued at UGX 6.5 billion shillings was done. That the second Appellant was therefore wrongfully accused of stealing the money paid for mobilization when the evidence clearly shows that mobilization was completed and additional physical works done. Counsel relied on the evidence of PW4 to the effect that physical works worth over UGX 5.8 billion shillings had been completed by Eutaw in September of 2014 yet work continued for another 2 months before termination of the contract.

Counsel submitted that the ingredients of theft were not proved by the prosecution as the payments were made through the rightful procedures under the PPDA Act and were lawfully authorised by UNRA.

With regard to the offence of uttering false documents, counsel submitted that none of the documents in question were authored by the second Appellant. No evidence was shown of him delivering any of the documents to UNRA and the illegality of the securities was never attributed to the second Appellant and that this evidence was not contradicted by the prosecution. Counsel argued that the learned trial judge misdirected himself in holding that the second Appellant uttered and or executed false securities. Counsel argued that all matters to do with finance in Eutaw were handled by Micheal Olvey and the payment of the money was requested by Eutaw through the Americans, Richard Pratt and Grant, under the charge of Micheal Olvey without the involvement of second Appellant.

While arguing ground 8, counsel submitted that the impugned resolution was signed before a notary public who indicated his full name and commission number and also bore the notary public's seal. The Notary Public stated that Thomas Elmore appeared before him and confirmed the contents of the resolution. Mr. Thomas Elmore denied the contents of the resolution and denied ever appearing before the Notary Public yet he admitted that he sent Mr. Bobby Little who was in charge of seeking new business on behalf of Eutaw, MS to Uganda. This was a piece of evidence that ought to have been relied

upon by the learned trial Judge to find that the resolution was legally signed by Mr. Thomas Elmore.

Respondent's arguments

In reply, counsel for the Respondent submitted that the Respondent was mandated to prove that the second Appellant had no claim of right to the UGX 24,780,823,522/=, the said amount is something capable of being stolen, the second Appellant fraudulently too the money for his will and lastly, that the money belonged to the Government of Uganda. Counsel submitted that the evidence of the prosecution was to the effect that a bid was presented to UNRA by Eutaw Mississippi and it emerged as the best evaluated bidder for the road works and the contract was between UNRA and Eutaw Mississippi, which the second Appellant had no connection with. Money is property capable of being stolen under Section 253(1) and (2) of the Penal Code Act.

Counsel submitted that the second Appellant fraudulently made away with UGX 24,780,823,522/= and disbursed the money together with PW8, Eng. Nuo Hong, who received UGX 12.2 billion shillings. UGX 4.6 billion shillings was meant for equipment but no equipment was ever brought on ground. After the money was deposited on the account, the second Appellant became the sole signatory to the account.

The requisition in favor of Eutaw for advance payment was made by PW4 and went through the approval process in UNRA. PE 55, formerly PID 2, UNRA - Government of Uganda payment advice dated

27th January 2014 for UGX 24,780,823,522/= for Eutaw Construction Company Advance payment MKN-Katosi Road and PE77 which indicates that the money was paid by Government of Uganda through its agency called UNRA.

Counsel argued that the learned trial Judge rightly concluded that the role played by the second Appellant was not small and he was not just a courier like he claimed to be. The second Appellant's submission that Eutaw Florida was an SPV of Eutaw Mississippi cannot be sustained in light pf the testimony of PW23 who testified that the SPV was fake and the issuers of the Power of Attorney were not employees of Eutaw Mississippi.

While arguing Ground 6, counsel submitted that the prosecution proved all the elements of the offence of uttering false documents against the second Appellant. The evidence of PW15 who received the securities from Housing Finance Bank and Kenya Commercial Bank testified that he received them from the second Appellant. The securities issued by Housing Finance Bank were denied by PW12, Mary Katusiime, who had allegedly signed them. Furthermore, evidence was adduced to the effect that Eutaw did not qualify for the securities at that time because they had no account with Housing Finance Bank.

In response to the second Appellant's argument that the IGG has no jurisdiction to prosecute private persons, counsel submitted that the second Appellant raised the same issue before the trial Judge who made a ruling in that respect. Counsel argued that private persons

can be prosecuted by the IGG for offences committed together with public officials where the money stolen is public funds.

Court's analysis and findings on the second Appellant's Appeal

Before we delve into determination of the second Appellant's grounds of Appeal against conviction and sentence, we find it pertinent to resolve the issue of whether the second Appellant, being a private person, could be tried by the Inspector General of Government(IGG) without authorization from the DPP for offences under the Penal Code Act. This argument was raised by the second Appellant before the trial Judge in a motion to arrest the judgment before delivery. The second Appellant has raised the same issue before us in ground 10 of his Memorandum of Appeal and filed extensive submissions on it.

The Inspector General of Government (IGG) in Uganda has the constitutional and statutory mandate to investigate and prosecute cases related to corruption, abuse of office, and mal-administration. However, whether the IGG can prosecute a private person depends on the nature of the offence and its connection to public administration.

Article 230(1) of the **1995 Constitution** of Uganda provides for the powers of the Inspectorate of Government. It provides;

> *"230. Special powers of inspectorate.*
>
> *(1) The Inspectorate of Government shall have power to investigate, cause investigation, arrest, cause arrest, prosecute*

or cause prosecution in respect of cases involving corruption, abuse of authority or of public office."

Thus, the IGG has the power to prosecute or cause prosecution in cases involving corruption, abuse of authority, and related offenses.

Likewise, **Section 14(5)** of the **Inspectorate of Government Act, 2002** gives the IGG the authority to prosecute cases related to its mandate. It states as follows;

14. Special powers of Inspectorate

(5) The Inspectorate shall have power to investigate, cause investigation, arrest, cause arrest, prosecute or cause prosecution in respect of cases involving corruption, abuse of authority or of public office.

The second Appellant was charged and convicted of the offences of theft and uttering false documents, which, as rightly found by the learned trial Judge, fall within the mandate of the IGG.

In the ruling made by the learned trial Judge upon the second Appellant's application to arrest judgment, he held as follows;

"Besides, Section 95(1) of the TIA refers to a situation where the indictment does not state any offence which the Court has power to try. In other words, the Section refers to lack of jurisdiction arising from a fact that an offence whether stated or not in the indictment is beyond the jurisdiction of the Court.

In the instant motion, the convict is not challenging the jurisdiction of this court to try an offence of theft contrary to

Section 254 of the Penal Code Act. Instead he is challenging the locus standi of the IGG to appear and prosecute the charge of theft before this court. In other words, the objection is to the incitement and not the jurisdiction of this court to try the case of theft. It follows, therefore, that the provisions of Section 95 (1) of the TIA cannot be called in aid by the convict to arrest a judgment before sentence. Such a motion would have been appropriately brought at the time of taking plea as an objection to the indictment but not at the stage of sentencing as is the case now."

We concur with the decision of the trial Judge above. In addition, these offences were committed with Government officials and the money involved was public funds. We therefore find that the IGG has jurisdiction to prosecute theft of Government funds under the Penal Code Act.

On the other part, the second Appellant contested the validity of the indictment on grounds that it was in the names of the Inspectorate of Government but was not signed by the Inspector General of Government contrary to Section 32 of the Inspector General of Government Act.

We reiterate that the Inspectorate of Government is a constitutional body established under **Article 223** of the **1995 Constitution of Uganda** and the **Inspectorate of Government Act, 2002**. It is mandated to investigate and prosecute cases related to corruption, abuse of office, and maladministration. The question of who must

sign an indictment brought by the Inspector of Government has been a subject of legal interpretation.

The law requires that indictments in criminal matters be properly signed to confer legal validity. Under **Section 23** of the **Trial on Indictments Act (TIA), Cap. 23**, an indictment must be signed by a person authorized by law to prosecute the offence. In the case of matters prosecuted by the Director of Public Prosecutions (DPP), indictments must be signed by the DPP or an authorized state attorney. However, where an indictment is brought by the Inspector General of Government, questions arise as to whether it must exclusively be signed by the Inspector General of Government(IGG) personally or whether any officer from the Inspectorate can sign it.

Courts have addressed this issue in various cases. The general principle is that, since the IGG is an independent prosecutorial authority under the Constitution, an indictment brought by the IGG must be signed by an authorized officer of the Inspectorate, not necessarily the IGG personally.

In **Kutesa & Others v Uganda (Constitutional Petition No. 46 of 2011)**, the Constitutional Court held that the IGG has autonomous prosecutorial powers similar to those of the DPP. However, the IGG can delegate certain functions to its officers, provided that such delegation is legally recognized. Similarly, in **Uganda v Tinyefuza (1997) UGCC 3**, the court emphasized that legal actions undertaken by Government agencies must conform to their statutory mandates,

reinforcing the importance of proper authorization in legal proceedings.

Thus, an indictment brought by the Inspectorate of Government must be signed by an authorized officer of the IG, but not necessarily by the IGG personally. As long as the officer signing the indictment is acting within the powers legally delegated under the Inspectorate of Government Act, the indictment remains valid. In this case, the indictment was signed by the Director of Legal affairs whom the IGG has not declared to lack the required authority to sign an indictment. We accordingly find that the indictment with which the second Appellant was charged is a valid indictment and as such, ground 10 of the Memorandum of Appeal fails.

Court's analysis and findings on grounds 2, 3, 4, 5, 7 and 9

The second Appellant was charged and convicted of the offences of Theft of UGX 24,790,823,522/= the property of Government of Uganda, contrary to Section 254(1) and 261 of the Penal Code Act. He was also convicted of the offence of uttering false documents contrary to Section 351 and 347 of the Penal Code Act Cap 120. The grounds of Appeal herein fault the learned trial Judge's decision to convict the second Appellant for the offences of theft and uttering false documents. We shall thus re-evaluate the prosecution evidence on record with regard to the two offences with which he was convicted.

1. Theft c/s 254(1) and 261 of the Penal Code Act.

Theft is defined in section 254 of the Penal Code Act reproduced as follows;

"254. Definition of theft.

(1) A person who fraudulently and without claim of right takes anything capable of being stolen, or fraudulently converts to the use of any person other than the general or special owner thereof anything capable of being stolen, is said to steal that thing.

(2) A person who takes or converts anything capable of being stolen is deemed to do so fraudulently if he or she does so with any of the following intents—

(a) an intent permanently to deprive the general or special owner of the thing of it;

(b) an intent to use the thing as a pledge or security;

(c) an intent to part with it on a condition as to its return which the person taking or converting it may be unable to perform;

(d) an intent to deal with it in such a manner that it cannot be returned in the condition in which it was at the time of the taking or conversion;

(e) in the case of money, an intent to use it at the will of the person who takes or converts it, although he or she may intend afterwards to repay the amount to the owner, and "special owner" includes any person who has any charge or lien upon the thing in question or

any right arising from or dependent upon holding possession of the thing in question.

(3) A person shall be taken to use money at his or her own will for the purposes of subsection (2)(e), 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.

(4) When a thing stolen is converted, it is immaterial—

(a) whether it is taken for the purpose of conversion or whether it is at the time of the conversion in the possession of the person who converts it;

(b) that the person who converts the thing in question is the holder of a power of attorney for the disposition of it, or is otherwise authorised to dispose of it.

(5) When a thing converted has been lost by the owner and found by the person who converts it, the conversion is not deemed to be fraudulent if at the time of the conversion the person taking or converting the thing does not know who is the owner and believes on reasonable grounds that the owner cannot be discovered.

(6) A person shall not be deemed to take a thing unless he or she moves the thing or causes it to move.

(7) Without prejudice to the general effect of subsection (6), a person shall be taken to have moved money if that person moves or causes it to be moved from one account to another or otherwise out of the original account."

For the offence of theft under sections 254 and 261 of the Penal Code, the Prosecution must prove beyond reasonable doubt the following elements;

(i) That at the material time, the UGX 24,780,823,522/= was property capable of being stolen.

(ii) That the second Appellant had no claim of right to that property

(iii) That the second Appellant had a fraudulent intent to permanently deprive the owner of that money.

(iv) That UGX 24,780,823,522/= belonged to the Government of Uganda and/or UNRA.

(See: **Uganda versus Kakwerere James and Another, Court of Appeal Criminal Appeal No.170 of 2020**)

From the submissions, it is my observation that the second Appellant contends that the prosecution failed to prove beyond reasonable doubt that he stole the said money which was paid through the PPDA procedures.

(i) That at the material time, the UGX 24,780,823,522/= was property capable of being stolen.

With regard to the first element, it is not disputed that money, under **Section 253(1)** of the **Penal Code Act**, is something capable of being stolen.

(ii) That the second Appellant had no claim of right to that money.

The prosecution led evidence to the effect that in 2010, a bid was presented to UNRA by Eutaw Mississippi and it emerged the best evaluated bidder for road works on Mukono Katosi Kisoga Nyenga Road. Consequently, the contract worth UGX 162,272,156,814/= was supposed to be signed between UNRA and Eutaw Mississippi or its authorised representatives. As such, the advance payment worth UGX 24,780,823,522/= belonged to Eutaw Mississippi and not the second Appellant's Eutaw of Florida which had no connection to Eutaw Mississippi.

As soon as the contract was signed, the second Appellant sought for a company that would implement the works and eventually agreed with PW8, ENG. NUO HONG, for Cinghcho International Construction Corporation (CICO) to execute the woks at a lower price. CICO had earlier on been part of the prequalification but had been eliminated at that stage of the procurement for having been found incompetent.

The second Appellant testified that that he got Eutaw (Mississippi) documents from Mr. Bobby Little who was in charge marketing for Eutaw Mississippi, for purposes of using its experience to win the contract as its special purpose vehicle company. That this explains

why the bidder was Eutaw Mississippi, but it was Eutaw Florida, which was awarded the contract. The second Appellant faulted the learned trial Judge for failing to appreciate the true meaning and import of a special purpose vehicle company and made a wrong finding that there was fraud involved. He testified that the incorporation of a local company by the name of Eutaw International Limited, which was incorporated by MESSRS MMAKS Advocates, was incorporated on the advice of UNRA as well as the registration of Eutaw, (Florida) as a foreign company.

In ascertaining whether the second Appellant had a claim of right to the said money, we have to critically analyze the allegation that Eutaw Mississippi was to be used as a Special Purpose Vehicle (SPV) for its vast experience in order to win the contract.

A Special Purpose Vehicle (SPV) also known as a Special Purpose Entity (SPE) is a legally separate entity created by a company or organization for a specific, limited purpose. It is often used to isolate financial risk, hold assets, or facilitate specific business transactions. In **Black's Law Dictionary, 8th Edition**, at page 1526, a Special Purpose Entity (SPE)—also referred to as a Special Purpose Vehicle (SPV)—is defined as:

"A legal entity created to fulfill narrow, specific, or temporary objectives, typically to isolate financial risk. It is often a subsidiary company with an asset/liability structure and legal status that makes its obligations secure even if the parent company goes bankrupt."

A Special Purpose Vehicle (SPV) is created to isolate risk, facilitate financing, and manage assets separately from its parent company. SPVs play a critical role in corporate finance, securitization, infrastructure projects, and investment management, making them valuable tools for businesses and investors alike. They are created by a parent company, financial institution, or group of investors for a specific purpose.

In this case, the second Appellant contends that Eutaw Florida was a Special Purpose Vehicle (SPV) for Eutaw Mississippi. We respectfully do not find any truth in this allegation. UNRA contacted one Mr. John Bond from Eutaw Mississippi on the eve of signing the contract with UNRA and he informed UNRA that they were dealing with the wrong people. PW23, Mr. Thomas Elmore testified in court via video link and acknowledged knowing Mr. John Bond but denied knowledge of Richard Pratt, Michael Olvey and Tim McCoy. According to the documents filed by the second Appellant as the country director for Eutaw Florida, Richard Pratt, Michael Olvey and Tim McCoy were the directors of Eutaw Florida. This piece of evidence leads us to one conclusion, the actual Eutaw Mississippi had no knowledge of Eutaw Florida and as such, it cannot be said that Eutaw Florida was a SPV for Eutaw Mississippi.

Eutaw Mississippi put in a bid presented by the second Appellant who also filed particulars as it representative based in Florida. This was a fraudulent act of the second Appellant to hold out as the representative of Eutaw Mississippi whereas not. The contract was

awarded to Eutaw Florida and the payment was made to Eutaw Construction Company incorporated in Uganda. We would agree with the prosecution on all fours that the second Appellant had no claim of right on the advance payment of UGX 24,780,823,522/=.

(iii) That the second Appellant had a fraudulent intent to permanently deprive the owner of that money.

Once the bid was successful, the second Appellant personally sourced for PW8, ENG. NUO HONG, under CICO to implement the contract at a lower price. Nui Hong testified as PW8, ENG. NUO HONG, and stated that he was the formal Country Manager of CICO (Cinghcho International Construction Corporation). He testified that CICO is a state owned construction company belonging to China Government and particularly does road construction. He testified that in 2010 there was a new road in newspaper so CICO applied for several roads of that project for the pre-qualification including Mukono Katosi. They applied for pre-qualification but CICO was not shortlisted for any of the road projects meaning CICO did not get any chance for biding of the road for Mukono Katosi. They did not follow it up until 2013 November, when PW8, ENG. NUO HONG, received a telephone call from a gentleman with an American accent who called on behalf of Eutaw Construction company and asked if CICO was interested in the Mukono Katosi road works.

He agreed after checking with UNRA to confirm which company had been awarded the contract and upon further engagements, the second Appellant showed him a Letter of Award Acceptance from

UNRA so as to join the Katosi Mukono job as accepted by UNRA. After several negotiations, PW8, ENG. NUO HONG, asked for an advance payment before mobilizing machinery and also asked that they open up a joint account with the second Appellant to transfer the money to Housing Finance Bank.

The condition was that as soon as the money agreed was transferred to CICO account, PW8, ENG. NUO HONG,'s signature would be immediately removed and his name was the only guarantee that CICO can receive some of the advance payment so that they start mobilization. UGX 12.2 billion was transferred onto the CICO account in Standard Chartered Bank and on the same day, PW8, Eng. Nuo Hong, signed a form to withdraw his name from the Eutaw Construction Account in Housing Finance Bank.

PW8, Eng. Nuo Hong, mobilized the equipment's from their site in Fort Portal. They mobilized bulldozers, trucks, wheel loader for this project and bought land to establish the compound to build a contractor's office, established a laboratory and also bought cement to build the compound. They also bought Bero beach, bought a bigger rock as a quarry to restore pressure to produce aggregate. PW8, Eng. Nuo Hong, testified to have done road preparation, site clearing and some drainage. At that time, the second Appellant and PW8, Eng. Nuo Hong, had not agreed how much work to do because the sub contract was not finalized. The prosecution evidence showed that another UGX 4.6 billon/= was wired to the USA for equipment. At

that point, the second Appellant was the sole signatory on the Eutaw Construction Company account in Housing Finance Bank.

The question before us now is; did the second Appellant fraudulently take the UGX 24,780,823,522/= to deprive it of the owner?

From the second Appellant's testimony, the advance payment made by UNRA was for purposes of mobilization of equipment on site prior to the Presidential launch of the road works. There is evidence that an amount of UGX 12.2 billion/= shillings was paid to CICO for mobilization and UGX 4.6 billion/= was wired to USA to SGI which was owned by Timothy Lee Ms Coy, Michael Olvey and Richard Pratt for purposes of providing equipment. Even though the equipment was never delivered from the USA, the mobilization funds were paid out and the mobilization actually done by CICO.

In our view, the element of intent to deprive UNRA of the money was not proved by the prosecution, having disbursed the money for the mobilization. The prosecution failed to prove that the money disbursed to CICO in a sub-contract to carry out the road works on Mukono Kisoga Nyenga road was intended to deprive the government of Uganda of the said money.

(iv) That UGX 24,780,823,522/= belonged to the Government of Uganda and/or UNRA.

The evidence of Eng. Olwa (PW4) confirmed that he authored the requisition for UGX 24,780,823,522/= marked PE 9 in favor of Eutaw Construction as advance payment for road works on Mukono Katosi

Kisoga Nyenga road. The requisition went through the approval process in UNRA and was paid out by UNRA to Eutaw Construction Company.

The element of intent to deprive UNRA of its property, being the UGX 24,780,823,522/= was not proved beyond reasonable doubt. We thus find the second Appellant not guilty of the offence of theft.

Uttering False Documents

The second Appellant was convicted of the offence of uttering false documents.

The offence of uttering false documents is defined under **Section 351** of the **Penal Code Act (Cap. 120, Laws of Uganda)** and it provides:

> *"Any person who knowingly and fraudulently utters a false document commits an offence of the same kind and is liable to the same punishment as if he or she had forged the thing in question."*

To secure a conviction for uttering false documents, the prosecution must prove the following elements beyond a reasonable doubt:

1. Existence of a False Document
2. The Accused Uttered (Presented or Used) the Document
3. Knowledge That the Document Was False
4. Intent to Defraud or Deceive

The prosecution case is that the second Appellant knowingly and fraudulently uttered a false performance guarantee No

00PG078/2013 contained in exhibit P121 and dated 21st November 2013 for UGX 16,528,000,000/= purporting the same to be issued by Housing Finance Bank whereas not. This security was purportedly signed by one Mary Katusiime who testified as PW12, and denied signing it and further testified that it could not have been issued to a company that did not even have an account with the bank.

The security was issued on 21st November 2013 yet Eutaw Construction Company through the second Appellant opened an account on 23rd December 2013. Exhibit P121 is thus a false document.

On the issue of whether the second Appellant knowingly and fraudulently uttered the false document to UNRA, the prosecution produced the evidence of Night Gertrude Akiiki who testified as PW15, to the effect that she received the securities from Kenya Commercial Bank and Housing Finance Bank from the second Appellant who she knew as a person that represented Eutaw construction company.

Maimuna Kabasemeza (PW13), an insurance Agent working with ICEA Group, formerly Insurance Company of East Africa testified that she met the second Appellant with a proposal to provide Insurance for the Road works equipment and the workers of his company. She testified;

> *"I was at Apollo's Office in Bukoto at 9am to meet Apollo and the wife, after I had received a call from his Secretary on 12th May 2014 to go and discuss the quotation for his shop located on*

Johnson Street London Chambers and his vehicles. After that meeting he asked whether the company where I work offers advance payment guarantees. I told him no we don't. He proposed whether I can contact a friend or colleague from big reputable companies where he can get the advance payment bond.

I told him I would try and contact my colleagues. Before I left his office he downloaded document from his computer and gave them to me. I looked at the document and noticed one of them was on a letter head for Housing Finance Bank dated November 2013. It was an advance payment guarantee, it was signed by an official from the Bank the name of the person was Kansiime. The second document had 2013 December still signed by the Housing Finance Bank official, I did not take time to read the details but the heading was a performance bond, but he insisted he wanted an advance payment guarantee."

Maimuna Kabasemeza (PW13) connected the second Appellant to her colleagues from SWICO and they delivered a draft instrument of the advance payment guarantee. Maimuna Kabasemeza testimony continues;

"The next day on 16th I received a call from Apollo to go back to his office and meet him. I reached there, he was there with his wife, they brought the document I had delivered the previous day the draft of the advance payment guarantees. Him and his wife, the wife was holding a pencil, Apollo was finger pointing, she

crossed out the date of 15th May 2014 and, replaced it with November 2013. She edited the address to Vero beach Florida. Apollo gave it to me and told me to go back and give it to Statewide officials and do as per his instructions."

It is clear from the above excerpt that the second Appellant had soft copies of Housing Finance Bank securities on his laptop. The evidence of PW13 and PW15 left no doubt that the second Appellant was in possession of the Housing Finance Bank performance guarantee and presented the same to UNRA. The second Appellant also knowingly and fraudulently uttered to UNRA a false advance payment bond No. 00AP5047/2013 dated 23rd December 2013 for UGX 24,790,823,522/= purporting the same to have been issued by State Wide insurance Company (SWICO) whereas not.

Likewise, the bid guarantee No. 0101600045 dated 01st December, 2010 for UGX 1,900,000,000/= purportedly prepared by Kenya Commercial Bank was not a genuine one. The prosecution referred to the evidence of PW14, Gabura Edward, a relationship manager at KCB who testified that neither the second Appellant nor Eutaw Construction Company had an account with KCB in order to qualify to apply for a security. At the same time, the evidence of PW15 was that the second Appellant delivered the KCB securities to UNRA at the time of bidding.

Based on the evidence re-evaluated above, it is clear that the second Appellant knowingly uttered the false securities with the intent to deceive UNRA. The prosecution has successfully proved that the

securities in question were forged, that the second Appellant knowingly presented them to UNRA thereby establishing the element of fraudulent intent. In light of these findings, this court is satisfied that the prosecution has proved the case beyond a reasonable doubt. The second Appellant is therefore found guilty of the offence of uttering false documents on all counts, contrary to Section 351 of the Penal Code Act.

The second Appellant did not Appeal against the sentence. We accordingly uphold the conviction and sentence of 3 years' imprisonment passed by the learned trial Judge.

Obtaining, execution of a security by false pretense

The second Appellant was convicted of the offence of obtaining, execution of a security by false pretense C/s 306 of the Penal Code Act.

Section 306 provides as follows;

> *"305. Obtaining goods by false pretences. Any person who by any false pretence, and with intent to defraud, obtains from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen, commits a felony and is liable to imprisonment for five years."*

The above provision criminalizes the act of dishonestly inducing another person to execute, make, accept, endorse, or destroy a valuable security through misrepresentation or deceit.

The key elements of this offense include:

1. False Pretenses: knowingly presenting false information or misrepresenting facts.
2. Inducement: persuading or influencing another person to act based on the false information.
3. Execution of Security: causing the victim to execute, alter, or destroy a document that has legal or financial significance.

The prosecution case was that the second Appellant, obtained, executed securities from UAP insurance companies by false pretence and with intent to defraud. The prosecution contends that by purporting to guarantee money already received and spent, the second Appellant was acting with fraudulent intent. UAP withdrew the advance payment bond marked Exhibit P105 upon discovering that they had been misled to issue covers for money already received and spent.

For the second Appellant, it was contended that he was only acting as a courier in respect of these securities from either ICEA or UAP and did not know of their contents. PW18, one Solomon Serugga, an insurance broker, testified that the second Appellant sought their services to provide an advance payment bond and a performance bond and this evidence was not challenged. PW18 contacted ICEA to provide the performance bond to the second Appellant. ICEA issued a performance bond to be signed by Eutaw being 10% of the contract

price and UAP issued the advance payment bond being 1.5% of contract price.

A few days later (July 2014) Solomon Serugga (PW18) got a copy of a letter marked Exhibit P.104 from UAP to UNRA cancelling the advance payment bond claiming Eutaw had no legal capacity to contract and that because CICO is not recognized by UNRA following a discussion on the matter. PW18 called the second Appellant and informed him of the development.

The evidence on record shows that the second Appellant physically sourced the UAP security in June 2014 long after he had received and disbursed the money and was fully aware of his actions. Solomon Serugga (PW18) handed over the documents to the second Appellant after falsely pretending that no advance payment had been made at the time he sought an advance payment bond from UAP through insurance brokers. The learned trial Judge found as follows;

> *"PW18 handed over the documents to A5. He was fully aware of the contents. He is guilty of falsely pretending that no advance payment had been made when he sought an advance payment bond from UAP through insurance brokers. The prosecution has proved the charges in count twenty-one beyond reasonable doubt."*

We uphold the findings of the trial Judge and have no reasons to depart from them. The second Appellant sourced the advance payment bond from UAP knowing well that the advance had already been paid out to Eutaw Construction Company. We thus uphold the

conviction and sentence for the offence of obtaining, execution of a security by false pretense.

Third APPELLANT: WILBERFORCE SENJAKO

Grounds 1, 2, 3 and 4

The above grounds of the third Appellant's Appeal raise one issue; whether it was the third Appellant's duty to verify the securities received by UNRA.

Third Appellant's submissions

We have thoroughly perused Mr. Jimmy Muyanja's submissions for the third Appellant. The submissions are vague, disorganized, incoherent and are drafted in a way that makes it difficult for the court to understand the arguments *vis a vis* the grounds of appeal. The only plausible argument we deduced from the submissions is that the third Appellant was not duty bound to verify the securities at UNRA. Nevertheless, we shall proceed to determine the third Appellant's grounds of Appeal as laid out in the Memorandum of Appeal.

Court's analysis and findings on the third Appellant's Appeal.

The third Appellant together with the first Appellant were charged with neglect of duty. The prosecution contended that they had a duty to verify securities which they neglected to perform as a result of which Government lost money to a company that had obtained advance payment against invalid securities.

In **Mugisha v. Uganda (Criminal Appeal No. 104 of 2011) 2019 UGCA 149 (17 June 2019),** this court held that neglect of duty is not a strict liability offense and emphasized that to secure a conviction, the prosecution must prove:

1. The accused had an official duty.
2. The accused neglected this duty.
3. This neglect resulted in prejudice to the complainant.

The third Appellant was the seventh accused person and in his evidence, he states that at that time, he worked with UNRA in the Department of Finance and Administration as Regional Accountant and reported to the Chief Accountant, Mr. John Mpanga. He testified that his role in regard to securities was receiving the securities from the procurement registry, signing for them, allocating reference numbers to the securities, entering the security into the security software so as to be easily retrieved and monitoring their expiry dates. The third Appellant denied that he had a duty to verify securities and in particular, the securities for the Mukono Katosi road as project accountant.

It is not in dispute that the third Appellant worked in the finance directorate whose mandate since 2012 was to verify securities as well as process payments against those securities. The first Appellant admitted writing exhibit P131, dated 24th December 2013, which confirmed that the securities from Housing Finance bank had been verified. However, the first Appellant testified that the letter was

drafted by the third Appellant whose initials appear at the bottom as *'sw'*, initials for Senjako Wilberforce.

We have perused exhibit P53, an email to the CEO Housing Finance Bank seeking verification of the securities received for Eutaw Construction Company and note that this was authored by the third Appellant as seen from the IP address with his names. Even though the third Appellant out rightly denied having authored this email, we have found in fact that he did and deliberately sent it to Isaac Mugote, knowing quite well that he was not the CEO of the Bank.

PW16, Hajat Mutalaga, an insurer from SWICO insurance company also testified that the third Appellant went to her office with what turned out to be fake SWICO securities, inquiring whether they were genuine. She told him they were not. PW16 also testified that the third Appellant went to her office with exhibit P54 a letter purporting to come from SWICO which she told him was a forgery. This evidence confirms that it was actually the duty of the third Appellant to verify the securities for the Mukono Katosi road project.

The next question to be addressed is whether the third Appellant neglected to carry out this duty.

We have already found that it was the third Appellant's role to verify securities and once this was finalized, the third Appellant would draft letters for the first Appellant to sign, since it was a policy that only the head of the directorate would send out letters. It was also a policy of UNRA that whoever drafts a letter should put the initials on it for identity of the source. The evidence of PW16, Hajat Mutalaga, an

insurer from SWICO insurance company was that the third Appellant went to her office with what turned out to be fake SWICO securities, inquiring whether they were genuine. She told him they were not. PW16 also testified that the third Appellant went to her office with exhibit P54 a letter purporting to come from SWICO which she told him was a forgery. The third Appellant also wrote a letter to Housing Finance Bank addressed to the CEO seeking to verify the securities, he sent it to the first Appellant who signed the same and it was dispatched to Housing Finance Bank.

Throughout this exercise, the third Appellant was carrying out his duty to verify the securities and we cannot say he neglected to carry out his duty. The negligence came in at one point, when he sent out a second verification email addressed to the CEO but sent it to a junior staff in the bank, Isaac Mugote. The third Appellant did not address the verification email to the right office and this explains why the securities were verified yet in fact, they were a forgery. This was based on evidence from witnesses from Housing Finance Bank such as Dorah Kiyaga, PWl0 and Mary Kansiime Nyende, PW12, that the Housing Finance Bank Ltd securities which the first Appellant signed confirming to be valid were actually forged. PW12 denied having authored the same.

It appears to us the third Appellant discharged his duty to verify the securities save for the email he sent to the sixth Respondent but addressed to the CEO Housing Finance Bank. In our view, the third Appellant was negligent in the act of sending the email to the bank

contact and not to the CEO however much the email was addressed to the CEO.

The third Appellant intentionally did not address the verification to the right office and this explains why the securities were verified yet in fact, they were a forgery.

It appears to us the third Appellant was made aware at some point that the securities submitted by the second Appellant were not genuine. The question of what he did with that information is still unanswered. In our view, the third Appellant should have placed this information before the Director Finance and Administration, the first Appellant, and the advance payment made to Eutaw would not have been processed to finalization. In this regard, we find that the third Appellant neglected to carry out this duty and thus resulted in prejudice to UNRA. We accordingly uphold his conviction for the offence of Neglect of duty.

Ground 5: The learned trial Judge erred in law and fact when he sentenced the Appellant being a junior officer with the same sentence as his superior and co-accused, Mr. Joe Ssemugooma.

The first Appellant has been acquitted of the offence of Neglect of duty and thus his sentence set aside. We have already found the third Appellant guilty of neglect of duty and note that he did not Appeal against severity of the sentence.

The above being our findings, this ground also fails accordingly.

Final Orders.

The above being our findings and decision, we now make final orders as follows: -

1. Criminal Appeal No. 112 of 2018 is hereby dismissed.
2. Criminal Appeal No. 91 of 2018 succeeds in part.
3. The first Appellant's Appeal, Joe Semugooma, in Criminal Appeal No. 91 of 2018 is hereby allowed. Joe Semugooma's conviction and sentence for the offences of Neglect of duty and Abuse of Office are hereby set aside. We order for his immediate release unless held on other lawful charges.
4. The second Appellant's Appeal, Apollo Senkeeto, in Appeal No. 91 of 2018 against the conviction for the offence of theft is hereby allowed. The conviction and sentence for the offence of theft are set aside.
5. The second Appellant's Appeal in Appeal No. 91 of 2018, Apollo Senkeeto, against the conviction for the offence of Uttering False Documents is dismissed. The second Appellant, Apollo Senkeeto, shall continue to serve the 3-year sentence for the offence of uttering false documents from the date of conviction, which is 29th August 2018. We shall deduct 7 months and 11 days, being the period he served before he was granted bail pending appeal on the 9th April 2019. He shall serve a sentence of 2 years, 3 months and 19 days from the date of delivery of this judgment.

6. The second Appellant shall also continue to serve his 5-year sentence for the offence of obtaining, execution of a security by false pretense. This sentence will also be served less the 7 months and 11 days' period that he had served prior to grant of bail pending appeal. He shall serve a sentence of 4 years, 3 months and 11 days from the date of delivery of this judgment. Mr. Apollo Senkeeto's bail is hereby cancelled. We order for his immediate arrest.
7. The third Appellant's Appeal, Wilberforce Senjako, in Appeal No. 91 of 2018 is dismissed. He shall serve the 5-year sentence for the offence of Neglect of duty from the date of delivery of this judgment. We shall deduct the 7 months and 11 days served before grant of bail pending appeal, which was granted on 9th April 2019.

We so order.

Dated at Kampala this ....22nd....day of ....August....2025

Hon. Justice Geoffrey Kiryabwire, JA

Hon. Justice Muzamiru Mutangula Kibeedi, JA

Hon. Justice John Oscar Kihika, JA