

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**HCT-00-CR-SC-0168-2008**

*(Arising out of Buganda Road Court Cr. Case No. 1260/08)*

UGANDA:..... APPLICANT

- VERSUS -

KAVUMA FREDDIES SCHOOF:..... ACCUSED

**BEFORE: HON. MR. JUSTICE PAUL K. MUGAMBA**

**JUDGMENT:-**

In the indictment the state has preferred a total of 10 counts against the accused, Kavuma Freddie Schoof alias Ssalongo. To prove the charges the state called twelve witnesses. PW1 was Lillian Nabunya (proprietor of Lijac Promotional Services), PW2 was Mohamed Kezaala (formerly Permanent Secretary, Ministry of Health), PW3 was Ali Oduka (an employee with the defunct Uganda Television at the time in issue) PW4 was Haruna Lubega (former proprietor of Suka Business Promotions), PW5 was Kenneth Kwikiriza (head of Kaku Media Links), PW6 was No. 24927 D/Sgt Ochan Walter

(an investigating officer), PW7 was Lucy Sang (an administrator with M/S Ernest & Young), PW8 was Olanya Joseph Okwonga (an expert on questioned documents), PW9 was No. 32471 D/C Ocaya Bernard (an investigating officer), PW10 was Kenneth Katarikawe an Advocate), PW11 was Elias Muyambe (an employee of the Bank of Baroda) and the last witness, PW12, was Okello John Gabriel (personnel Officer, Office of the President). In his defence accused gave an unsworn statement. He had no witness.

The charges preferred against the accused were as follows: -

COUNT 1 STATEMENT OF OFFENCE

Obtaining Money by False Pretences, contrary to section 305 of the Penal Code Act.

PARTICULARS OF OFFENCE

KAVUMA FREDDIE SCHOOF alias SSALONGO and others still at large on the 10<sup>th</sup> day of February 2005 at the Ministry of Health Headquarters, in the Kampala District with intent to

defraud obtained money UG. Shs.41,920,000/= (forty one million Nine Hundred and Twenty Thousand) only, from the Government of Uganda (PMU) Ministry of Health by falsely pretending that he was an authorized representative of LIJAC PROMOTIONAL SERVICES, whereas not.

## COUNT 2 STATEMENT OF OFFENCE

Forgery, contrary to sections 342 and 347 of the Penal Code Act.

## PARTICULARS OF OFFENCE

KAVUMA FREDDIE SCHOOF alias SSALONGO and others still at large, on the 10<sup>th</sup> day of March 2005, within Kampala, in the Kampala District with intent to defraud or deceive made a false document, to wit a receipt dated 10<sup>th</sup> March 2005 for KAKU MEDIA LINKS purporting that it had been from KAKU MEDIA LINKS, whereas not.

COUNT 3 STATEMENT OF OFFENCE

Uttering a False Document, contrary to section 351 of the Penal Code Act.

PARTICULARS OF OFFENCE

KAVUMA FREDDIE SCHOOF alias SSALONGO and others still at large, on the 10<sup>th</sup> day of March 2005, within Kampala, in the Kampala District with intent to defraud or deceive uttered a false document to PMU, to wit a receipt dated 10<sup>th</sup> March 2005 for KAKU MEDIA LINKS purporting that it had been from KAKU MEDIA LINKS, whereas not.

COUNT 4 STATEMENT OF OFFENCE

Forgery, contrary to sections 342 and 347 of the Penal Code Act.

PARTICULARS OF OFFENCE

KAVUMA FREDDIE SCHOOF alias SSALONGO and others still at large, on the 2<sup>nd</sup> March 2005, within Kampala in the

Kampala District, with intent to defraud or deceive, made a false document, to wit a receipt No. 002 dated 2<sup>nd</sup> March 2005 for SUKA BUSINESS PROMOTION purporting that it was a genuine document, whereas not.

#### COUNT 7 STATEMENT OF OFFENCE

Uttering a False Document, contrary to sections 351 of the Penal Code Act.

#### PARTICULARS OF OFFENCE

KAVUMA FREDDIE SCHOOF alias SSALONGO on the 2<sup>nd</sup> day of March 2005, within Kampala, in the Kampala District with intent to defraud or deceive, knowingly and fraudulently uttered a false document to PMU, to wit receipt No. 002 dated 2<sup>nd</sup> March 2005 for SUKA BUSINESS PROMOTION, whereas not.

COUNT 8 STATEMENT OF OFFENCE

Forgery, contrary to sections 342 and 347 of the Penal Code Act.

PARTICULARS OF OFFENCE

KAVUMA FREDDIE SCHOOF alias SSALONGO and others still at large, on the 3<sup>rd</sup> March 2005, within Kampala in the Kampala District, with intent to defraud or deceive made a false document, to wit a cash sale receipt No.4500 dated 3<sup>rd</sup> March 2005 for COMPUSTAT (U) LTD purporting that it was a genuine document, whereas not.

COUNT 9 STATEMENT OF OFFENCE

Uttering a False Document, contrary to section 351 of the Penal Code Act.

PARTICULARS OF OFFENCE

KAVUMA FREDDIE SCHOOF alias SSALONGO on the 3<sup>rd</sup> day of March 2005, within Kampala, in the Kampala District, with

intent to defraud or deceive, knowingly and fraudulently uttered a false document to PMU, to wit a cash sale receipt No.4500 dated 2<sup>nd</sup> March 2005 for COMPUSTAT (U) LTD purporting that it had been from COMPUSTAT (U) LTD , whereas not.

#### COUNT 10 STATEMENT OF OFFENCE

Abuse of Office, contrary to section 87 of the Penal Code Act.

#### PARTICULARS OF OFFENCE

KAVUMA FREDDIE SCHOOF alias SSALONGO between March and June 2005 at Uganda Television Offices, Nakasero in the Kampala District, while being employed by the Uganda Television as a Production Manager, abused the authority of his office, to wit receiving money for presenting HIV/AIDS Sensitization programmes for his personal gain which he was paid to do as an employee, which act was prejudicial to the interest of his employer.

Concerning Count 1 of the indictment the prosecution led evidence which shows the accused person applied for shs.41,920,000/= from the Ministry of Health Project Management Unit (PMU) stating he was doing so on behalf of Lijac Promotional Services. Accused undertook to air programmes relating to HIV/AIDS. The relevant contract was signed by him on the one hand and PW2 and others on the other. Evidence of the contract is Exhibit P.5. There is evidence of PW1, proprietor of Lijac Promotional Services that she was the sole proprietor of the enterprise, exhibits P.20(i), P. 20 (ii) and P. 20 (iii). Evidence was led that Lijac Promotional Services had a current account with Bank of Baroda which was shown to be No, 01101007451 and that under the contract disbursements were to be made to the account aforesaid. The same exhibit P.5 shows shs.41,920,000/= was the amount to be so disbursed. Exhibit P.21 (iv) is a Bank of Baroda cheque leaf for shs.41,910,000/= signed on behalf of Lijac Promotional Services on 25<sup>th</sup> February 2005. The money was payable to

Lillian Nabunya (PW1). There is exhibit P3 which is called a memorandum of understanding between Lijac Promotional Services on one hand and Freddie S. Kavuma on the other. Therein it is acknowledged Lijac Promotional Services had received funding from the Ministry of Health under the Global Fund. It was stated also that Lijac Promotional Services were not to be held liable under the contract with Ministry of Health relating to Global Fund. One of the signatories to the Memorandum is accused himself. It was not disputed accused received shs.41,910,000/= from PW1 on behalf of Lijac Promotional Services; the amount received from Global Fund under the contract. What is disputed however is lack of knowledge on the part of Lijac Promotional Services concerning the contract at its inception up to the stage when Lijac Promotional Services was told funds were being deposited on its account. PW1 said she learnt of the transaction concerning Global Fund when she was told by accused that money was due to be deposited on the account. She said that at no time was accused

authorized to transact any business in the name of Lijac Promotional Services. Accused on the other hand stated that he told PW1 about his plans to enter a contract on behalf of Lijac Promotional Services with the Ministry of Health (PMU) and that PW1 had given her blessings. There is no evidence to that effect. I should add also that accused does not deny receipt of the shs.41,910,000/=. There is the evidence of PW3 who worked on UTV at the time in issue. He testified that he was never told about accused's plans to air programs on UTV relating to the Global Fund, HIV/AIDS in particular, and that accused would have first made him aware had he done so. He testified that accused never aired HIV/AIDS programs related to Global Fund. Suffice it to say no evidence was led to show such programmes were ever aired. I find they never were and that accused acted throughout the transaction with intent to deceive. A person acts with intention to deceive when he induces another to believe that a thing is true, which is false, and which the person practising the deceit knows or believes to be false.

So said Buckley J in *Re London and Globe Finance Corporation Ltd [1903] 1 Ch 728*. In *Welham Vs DPP [1960] 1 ALL ER 805* Lord Radcliffe said:

*"... deceit can involve a reckless indifference to truth all falsity as well as the deliberate making of false statements; and in all cases it may involve the inducing of a man to believe a thing to be false which is true as well as to believe to be true what is false."*

In the instant case accused purported to enter into a contract on behalf of Lijac Promotional Services without the knowledge and consent of the proprietor of Lijac Promotional Services. He made the representation that he represented Lijac Promotional Services to the Ministry of Health (PMU) in order to draw from the Global Fund. He said he would air programmes on UTV when he was paid when he had no intention of airing such programmes. In the event accused received the money (as evidenced by exhibit P4). He did so fraudulently but even where a person obtains money on

behalf of another, provided it is done by false pretences, he commits the offence of obtaining money by false pretences. See ***Terrah Mukindia Vs Rep [1966] EA 425.*** In consequence I agree with both assessors in their finding that accused committed the offence alleged. I so find and convict him on count 1.

Counts 2, 4, 6 and 8 of the charge are on forgery, contrary to sections 342 and 347 of the Penal Code Act. It is alleged in Count 2 that accused on 10<sup>th</sup> March 2005 forged a receipt dated 10<sup>th</sup> March 2005 for KAKU MEDIA LINKS. In count 4 it is alleged that accused on 11<sup>th</sup> March 2005 forged a receipt dated 11<sup>th</sup> March 2005 for KAKU MEDIA LINKS. I elect to deal with counts 2 and 4 first. I shall deal with counts 6 and 8 later.

It was the evidence of PW7 that accused presented exhibit P8 (i) and exhibit P8 (ii) to the Project Management Unit by way of accounting for money disbursed to Lijac Promotional

Services under the Global Fund contract related to earlier. The two exhibits purported to be from KAKU MEDIA LINKS.

Exhibit P8 (i) purported to be for shs.8,316,000/= . It was payment for DV field tapes and sundry tapes. In its turn Exhibit P8 (ii) which bore corrections purported to be for shs.16,316,000/= and was for tapes, field DV tapes and super VHS tapes. It was the evidence of accused that he received the two receipts from places he purchased the said items from. PW5, Kenneth Kwikiriza testified that he is the proprietor of KAKU MEDIA LINKS which produces television advertisements and documentaries. It was his evidence he is sole proprietor and that the enterprise has been running since 1989. He was emphatic he never did business with Lijac Promotional Services though he admitted he knew both accused and PW1 before. PW5 said though he hires people from time to time those people do not issue receipts. He said also that his enterprise does not deal in the sort of items shown on the receipts. When PW5 was shown exhibits

P8 (i) and exhibit P8 (ii) he said neither the receipts nor the signatures on them were genuine. The receipts were not those of his firm and the signatures which appeared on them were not his. It was his evidence the proper e-mail address was kakumedia ug @ yahoo.co.uk yet a hotmail address appeared on the strange receipts. He added that the physical address on the exhibited documents reads Nakasero Road, P.O. Box 71386 Kampala whereas the offices of Kaku Media Links are at Rajah Chambers, Parliamentary Avenue. PW8, Olanya Joseph Okwonga from the Government Analytical Laboratory stated that he was requested by CID to examine certain documents including Exhibit P8 (i) and exhibit P8 (ii). It was his finding after due comparison with sent samples that the handwriting on exhibit P8 (i) and that on exhibit P8 (ii) were similar to those of accused himself. A report to that effect is exhibit P.10. Section 342 of the Penal Code Act states that forgery is the making of a false document with intent to defraud or to deceive. Indeed in Re-Windsor (1965) 10 Cox 118 Blackburn J noted:

***“Forgery is the false making of an instrument purporting to be that which it is not; it is not the making of an instrument which purports to be what it really is, but which contains false statements. Telling a lie does not become a forgery, because it is reduced into writing.”***

In light of the evidence both of PW5 and PW8 I am satisfied the prosecution has proved beyond reasonable doubt that the accused made documents P8(i) and exhibit P8(ii) purporting to be receipts from Kaku Media Links whereas not. I agree with the two assessors in that respect and I accordingly convict accused on counts 2 and 4 of the charge.

Nevertheless I do not agree with the assessors that the prosecution has proved counts 6 and 8 of the charge beyond reasonable doubt as there is no evidence of the accused making the documents in issue. Accused is acquitted on counts 6 and 8.

Accused is charged with uttering a false document respectively in counts 3, 5,7 and 9 of the indictment. Section 351 of the Penal Code Act provides that 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. Both in cases of forgery and in uttering 'fraudulently' is equated with 'intent to defraud'. See ***Mahendra Raja Jani Vs Republic [1966] EA 319***. The House of Lords per Lord Radcliffe in ***Welham Vs Director of Public Prosecutions [1961] AC 103, 125*** observed:

***"In my opinion it is clear that in connection with this offence the intent to defraud existed when the false document was brought into existence for no other purpose than that of deceiving a person responsible for a public duty into doing something that he would not have done but for deceit, or not doing something that but for it he would have done.***

***Correspondingly, to put such a document forward with knowledge of its falsity and with a similar intent was to commit the crime of uttering it ...”***

In her testimony PW7 testified that in the process of accounting for money disbursed to Lijac Promotional Services by Ministry of Health (PMU) for the Global Fund accused proffered documents inclusive of the receipts in exhibits P8 (i) and P8 (ii). This evidence was not denied by the defence itself. I have adverted to exhibits P8 (i) and P8 (ii) in relation to the charge of forgery in count 2 and count 4 and my finding is to the effect that accused had made the false documents they are. By presenting the two to PMU for accountability the accused uttered them, thus committing the offences charged in counts 3 and 5 of the indictment. As regards counts 7 and 9 I have noted already that no proof exists accused made the false documents involved in count 6 and 8. It is also worthy of note that the documents involved

were never exhibited. In the circumstances I find no evidence led to support the offences of uttering a false document alleged in count 7 and count 9 of the indictment. I respectfully differ with the contrary opinions of the assessors and acquit the accused on the two counts.

Count 10 of the indictment is abuse of office. At the time in issue accused worked as an information officer (TV producer) in the office of the President. Evidence to this effect was given by Okello John Gabriel (PW12) who is a Personnel Officer, Office of the President. There is also a letter exhibit P.22 (ii) to the effect. The evidence is not contested by the defence. I have anxiously followed the fortunes of this impugned transaction and note that while his involvement happened when he was in the employ referred to there is no evidence accused at any stage intimated to those at the Project Management Unit of the Ministry of Health that he worked as Information Officer in the office of the President or indeed that they were at any time aware of

that fact. It is nowhere shown that but for his position he would or would not have done what he did. There is nothing to show that his employers themselves knew that he was involved in the transaction in issue at the material time. According to the Oxford Advanced Learner's Dictionary, 7<sup>th</sup> Edition, 'abuse' connotes inter alia use of something in a way that is wrong and harmful or to make bad use of. The prosecution has not shown anywhere in evidence that accused abused his office. His employment was never a point of reference and nowhere is it shown that his employer, Uganda Television in the Office of the President was ever affected by his acts under review. It is in light of lack of evidence of abuse of office that I do not agree with the opinions of the assessors regarding this count. Accused is acquitted of this count also.

In the result I acquit accused on charges of forgery in count 6 and count 8, uttering a false document in count 7 and 9 as well as abuse of office in count 10 of the indictment. He

stands convicted on count 1 which is obtaining money by false pretences, counts 2 and 4 of forgery and counts 3 and 5, uttering false documents.

**PAUL K. MUGAMBA**

**JUDGE**

**13<sup>th</sup> March 2003.**

**Court:-**

Accused's bail is accordingly cancelled.

**PAUL K. MUGAMBA**

**JUDGE**

**13<sup>th</sup> March 2003.**

**SENTENCE:-**

I have listened to the submission of the learned State Attorney as well as to what the accused had to say regarding possible sentence.

The convict committed acts of dishonesty not only to those involved in disbursing funds of the Global Fund in which the Uganda Government was an actor but also to Lijac Promotional Services. My heart goes out to that section of our society in dire need of proceeds from the Global Fund. He says he is of advanced age but he should be ashamed of this accomplishment. I must note that he is lucky the available law as we have it does not have the desired cutting edge. We owe it to the relevant authorities to make available penalties that reflect the gravity of offences such as these the convict committed.

In the circumstances I sentence the convict to 5 years' imprisonment on count 1 and to 3 years' imprisonment on

each counts 2, 3, 4 and 5. The sentences are to run concurrently. In addition the convict is to pay back the shs.41,920,000/= to the Government of Uganda, being the amount he feloniously received.

**PAUL K. MUGAMBA**

**JUDGE**

**13<sup>th</sup> March 2003.**

**Court:-**

Right of Appeal explained.

**PAUL K. MUGAMBA**

**JUDGE**

**13<sup>th</sup> March 2003.**