REPUBLIC OF KENYA

IN THE CHIEF MAGISTRATE'S ANTI-CORRUPTION COURT AT MILIMANI

ANTI-CORRUPTION CASE NO. E 8 OF 2024

REPUBLIC.....O.D.P.P

VERSUS

PHILIP MUTUA KILONZO.....ACCUSED

JUDGEMENT

The accused person one **PHILIP MUTUA KILONZO** has been charged with 3 offences as follows:-

COUNT 1

RECEIVING A BRIBE CONTRARY TO SECTION 6 (1) (a) AS READ WITH SECTION 18 (1) AND (2) OF THE BRIBERY ACT NO 47 OF 2016.

Particulars of the offence are that on the 4th day of October 2020, at Afro Sayari Hotel along Eastern bypass within Nairobi City County in the Republic of Kenya, the accused together with others not before court, requested for a bribe of Ksh. 2.9.million from Joseph Ndambuki Makosi, Shadrack Mutisya Kyungu and Simon Kioko Mwangangi who are the officials of United African Evangelical Ministries and Jackson Musyoka Mutie who is an official of Grace Children's Home, with intent that, in consequence, he would influence the writing off of alleged tax due to Kenya Revenue Authority from Grace Children's Home.

COUNT 2

RECEIVING A BRIBE CONTRARY TO SECTION 6 (1) (a) AS READ WITH SECTION 18 OF THE BRIBERY ACT NO 47 OF 2016.

Particulars of the offence are that on diverse dates between 3rd and 8th October 2020, at an identified location within the Republic of Kenya, the accused requested for a bribe of Ksh. 2.9.million from Joseph Ndambuki Makosi, who is an officials of United African Evangelical Ministries, with intent that, in consequence, he would influence the writing off of alleged tax due to Kenya Revenue Authority from Grace Children's Home.

COUNT 3

OBTAINING MONEY BY FALSE PRETENCES CONTRARY TO SECTION 313 OF THE PENAL CODE.

Particulars of the offence are that on the 1/10/2020 at Busia within Busia County in the Republic of Kenya with intend to defraud , the accused unlawfully obtained money in the sum of Ksh. 20,000/= from Simon Kioko Mwangangi an official of the United African Evangelical Ministries purporting to be travelling expense from Busia to Kenya Revenue Authority offices in Nairobi for purposes of holding a meeting with Kenya Revenue Authority officials with a view of resolving a tax demand dispute between the said Kenya Revenue Authority and Grace Children's Home, a fact he knew to be false.

The accused who was ably represented by **MR. GIKONYO ADVOCATE** al-through the trial denied the offences above, and the prosecution as led by MS. NANJAYA called a total of **13 (thirteen)** witnesses in making out its case against him.

The prosecution case was as follows:-

PW1 ONE JOSEPH NDAMBUKI MAKOSI, a pastor employed by United African Evangelical Ministries (hereinafter referred to as UAEM) and secretary to the board of management testified that his duties are overseeing the ministry's activities and giving spiritual nourishment to congregants.

He stated that the church started the Grace Children's Home in 2009 and has been supporting it financially and materially. It was later registered as an entity of its own. And that in 2019 some well-wishers and friends of the church from the United States of America sent donations to the children's home through the church.

He stated further that after consultations with the church leadership, the accused person was appointed to clear the container carrying the donation. They facilitated the process by paying the requisite fees and taxes, and the cargo was later cleared on 16/1/2020. The container was transported to the church compound.

He produced the clearance documents and receipts as exhibits:

- **The email and all the attachments.....P.Exh. 1 a,b,c,d,e,f,g,h,I,j,k,l,m,n.**
- **Electronic certificate under section 106B of the Evidence Act....P.Exh. 2**

He went on to state that on 30/9/2020 an email was received by the church leadership including himself, it was purportedly sent by the Kenya Revenue Authority and authored by one Aaron Moenga who was allegedly a project manager with KRA, alleged that the cargo had been dumped at the church premises yet it was meant for the children's home, so they were required to pay the advance tax for diversion of the consignment.

Since they had paid all the taxes and all other monies as directed by the accused during the clearance of the container, they summoned him to explain what was going on.

He produced the email demanding for advance tax, as sent by one Aaron Moenga who was allegedly a KRA official as exhibit. It was addressed to Grace Children's Home through UAEM.

- **Email dated 30/9/20.....P.Exh. 3**

He confirmed that the accused was facilitated with Ksh. 20,000/= to come from Busia to Nairobi to meet the alleged KRA officials and later brief the church on the

way forward. And on 3/10/20 the 6 church board members and the director of the children's home met with the accused at their Kangundo headquarters office. It is in that meeting that the accused told them all that he had spoken to the alleged KRA officials and they were demanding Ksh. 5.8 million as the advance tax.

They arranged to meet the alleged KRA officials on 4/10/20, which meeting was held at AFRO SAYARI HOTEL along the Eastern bypass in Nairobi.

He testified further that in that meeting the accused came with the two alleged KRA officials who flashed their identity cards on their faces without giving them time to read their names for identification purposes. And that since it was during COVID-19 period and they were wearing face marks it was hard for church officials to physically identify them.

After a brief discussion on reduction of the demand tax, the two officials told the board members to pay 50% of the amount communicated to them earlier by the accused, which now brought it down the to Ksh. 2.9 million, through the accused person so that they can burn or destroy the KRA records that reflected the alleged advance tax.

Thereafter the accused escorted the two individuals out of the hotel and when he came back he urged them to hastily pay the Ksh. 2.9 million to avoid unexplained consequences.

He wound up his testimony by stating that he later suspected the transaction, so he started recording his conversations over the subject with the accused using his phone.

He further produced the following as exhibits:

- **Reminder letter for the demand dated 7/10/20.....P.Exh. 4**
- **Phone recorded audio CD.....P.Exh. 5**
- **Transcripts of the translated conversation.....P.Exh. 6 a, and b,**
- **Certificate for the audio recording.....P.Exh. 7**
- **Warning for ignoring the demand letter.....P.Exh. 8**

- **Inventory for handing over the phone to EACC and back....P.Exh. 9 a, and b,**

The suspicion continued to grow and so the matter was reported to the Ethics and Anti-corruption Commission (EACC) upon the advice of the organization's legal officer. It was investigated. The accused was traced and arrested.

He identified the accused before the court as the person who cleared the cargo for the church and as the person who was involved in the suspicious transaction herein.

During cross-examination by the defence counsel he stated that the accused kept on urging them (the board members) to quickly pay the Ksh. 2.9 million to the alleged KRA officials. And that both the accused and the alleged KRA officials demanded for Ksh. 2.9.million in exchange of the destruction of the KRA records/file showing the alleged advance tax.

PW2 ONE.....SHADRACK MUTISYA KYUNGU, is a board member of UAEM. Having been part of the team that met with accused over the tax issue he gave evidence similar to that of PW1 on the events that transpired in this case.

PW3 ONE JACKSON MUSYOKA MUTIE, is the manager of Grace Children's Home which was established by UAEM. He confirmed that the home initially operated under the umbrella of UAEM, before it was registered in 2010. And that the relief goods which were sent through the church to the home were delivered and distributed accordingly in January 2020.

His evidence as regards the clearance of the relief goods from the USA and delivery to the children's home, and the events that followed that led to the institution of this case is similar to that of PW1 and PW2.

He confirmed that he was present in all the spaces where the suspicious transaction that gave rise to this case was discussed, as the manager of the children's home together with the board members of the church.

PW4 ONE SIMON KIOKO MWANGANGI is a pastor and treasurer at UAEM. He is also a member of the board that participated in the affairs of the church including the occurrances that gave rise to this case. He confirmed that the consignment in this case was cleared and all the tabulated charges as stated by accused, including duty were paid by the church through the accused's personal account held at KCB account no. 1165587319.

Later on when the alleged advance tax issue came about, he was directed by the board to send to accused Ksh. 20,000/= to facilitate him to travelling from Busia to Nairobi to handle the matter. He confirmed that he paid the amount through accused's M-Pesa number 0714722782.

He produced the Mpesa statement for accused as exhibit.

- **M-Pesa statement for Tell. NO. 0714722782.....P.Exh. 10**

PW5 ONE ISAACK MULE GACHOKA is the Kenya Revenue Authority official who currently works as the Research Manager, he clarified that in the year 2020 he was working as the Chief Manager of Information Exchange in the department of Intelligence and Strategic corporation.

He was in-charge of communication with the external agencies.

His duty in this case was to confirm the authenticity of the alleged KRA demand letter/email for advance tax, the reminder and the warning authored by Aaron Moenga herein produced as **P.Exh. 3, 4 and 8, and** whether the alleged Aaron Moenga was an employee of KRA.

He confirmed that on conducting internal checks and verification he found that the said demand letter, reminder and warning did not emanate from the KRA offices and that the author one Aaron Moenga was not a KRA employee.

He noted further that the cargo in this case contained relief goods only. And that KRA charges advance tax on commercial vehicles only and NOT relief goods. He commented that the 3 exhibits were fake in content.

He went further to inform the court that the title of the author of the letters/email as indicated therein as Project Manager, was or is a position that does not exist in KRA. He added that the letters in question are mentioning a container, they are giving expiry dates and quoting sections of the East Africa Community Act law among many other visible irregularities, which is against the design and manner in which KRA drafts its demand letters, since KRA only quotes a certain specific figure/amount demanded, and that the laws relied upon in charging the same. And further that such letters are written by the Commissioner and not a domestic tax officer as purported in P.Exh. 3, 4 and 8.

He concluded his testimony by informing the court that KRA does not reduce taxes once a demand letter is out, it does not bargain or engage the client in the manner exhibited in this case, regardless of the time taken by the client to settle the demanded amount. He noted that all their meetings and engagements as KRA and the clients are official and must be held in the KRA offices.

He produced his response/reports regarding authenticity of the letters and the alleged KRA officials as exhibits.

- **Letter dated 2/11/20.....P.Exh. 11**
- **Letter dated 13/11/20.....P.Exh. 12**

During cross-examination by the defence counsel he reiterated the fact that the letters in question were not genuine since they did not bear the genuine KRA letter head.

He stated in further cross-examine that it was legal for UAEM to import and clear relief goods on behalf of the Grace Children's Home. And that there was no diversion of goods committed in the present case.

He also stated that so long taxes have been paid, KRA does not follow where the goods delivered and whether they sold by the owners, as that is the duty of other security agencies.

During re-examination by the prosecution counsel, he confirmed that a main company can pay taxes for a subsidiary company, the same way a father is allowed to pay taxes for a son.

He also confirmed that the clearing agents' duty ends at the port once he obtains an exit/pass ticket for the cargo.

PW6 ONE ALLEX KINYANJUI, the Computer and Mobile phone Forensic examiner with the EACC gave evidence to the effect that he examined the conversations and call logs between the accused and PW1 from their mobile phones that is related to this case as directed by the Investigating Officer, and transferred the same to a DVD that was produced in court as an exhibit.

He confirmed that the two communicated and produced the extracted information as exhibits as follows:-

- **Digital exhibit memo form dated 9/12/20.....P.Exh. 13**
- **Digital document examiners report.....P.Exh. 14**
- **Certificate for audio recordings transferred to a DVD.....P.Exh. 15**

PW7 ONE KENEDY MOSOTI, a Senior State Counsel with the Attorney General's office charged with approval of registration of societies. He confirmed that the United African Evangelical Ministry –UAEM- is a legally registered entity, having been registered on 30/9/1999.

He produced the registration certificate as ehibit.

- **Registration certificate no. SOC/37735.....P.Exh. 18.**

PW8 ONE NO. 67985 P.C. CHARLES KAMBIA, is one of the arresting officers in this case, he was part of the team that traced accused to Busia town in Busia county and had him arrested and brought to the EACC offices in Nairobi to be processed to face charges herein.

PW9 ONE VINCENT SAMBA, is also an arresting officer in this case. He gave evidence similar to that of PW8 on what transpired at the material time.

He produced an inventory of recovered job cards belonging to accused from accused during his arrest as exhibit.

- **Inventory of recovered job cards.....P.Exh. 19**
- **Two Job cards.....P.Exh. 20 and 21**

PW10 ONE CHRISTOPHER MUSAU, is the Transport Logistics Manager and Director of Silver Hawk International Company which does clearing and forwarding of imports. He stated that he employed the accused at his Busia office and has interacted with him since 2008 to date. In 2017, he terminated the accused's contract when he shifted his company from Busia to Malaba and did not need the accused anymore, though they have always communicated when need arises.

He stated further that he declined the accused's request to clear the shipment in this matter since his company had no contractual engagements with the shipping company.

His main purpose in this case was to identify the accused's voice in the audio recorded where the accused was conversing with PW1.

He positively identified accused's voice and produced a certificate for voice identification as exhibit.

- **Certificate for voice identification.....P.Exh. 22**

PW11 ONE WILSON NZWII MUINDE, is an employee of Davcharl Logistics company which does clearing of imports. In December 2019 the accused requested by accused to assist in clearing a UAEM consignment from the USA. He

accepted and indeed cleared the container accordingly. He was paid Ksh. 25,000/= by accused who also cleared all the legal fees including taxes for the same. The church through the board members visited the Nairobi Mombasa Inland port and collected the container on 10/1/20.

He clarified that if there were extra KRA charges and taxes, his company would have been contacted first since they were the clearing agents as approached by the accused. And that they would have contacted the church over the same. However in this particular transaction, there was none.

PW12 ONE DAVID SIMIYU SIFUNA, is also an employee of Davcharl logistics company, and a colleague to PW11. He confirmed that PW11 was approached by accused and that they cleared the cargo in this case. **He gave evidence similar** to that of PW11.

PW13 ONE MARTIN MBUVI, is the Investigating Officer in this case. He confirmed that PW1 reported this case to EACC as an extortion case in which the accused was demanding money alleging that the UAEM church owed KRA advance taxes for dumping imported goods at its compound yet the goods belonged to the Grace Children Home.

He gave evidence similar to that of PW1,2, 3, and 4, on the what transpired between the accused and the UAEM board members up-to the time the matter was reported to EACC for action.

He told the court that he was assigned this case for purposes of investigation, and so he began investigating the matter by recording the witness statements and collecting evidence and information over the matter. He also filled Miscellenious applications for orders to investigate accused's Safaricom Mpesa accounts and to get registration details for accused's mobile phone number.

At the conclusion of the investigations he forwarded the file to the ODPP with a recommendation of the charges to be preferred against the accused. The ODPP

concurred with him and the accused was arrested and charged accordingly. He identified the accused person as the culprit in this case.

He produced the following as exhibits:-

- **Report No. 90849 as booked by PW1.....P.Exh. 23**
- **Misc. Appli. No. E 2911/20 for accused's MPesa accounts.....P.Exh. 24**
- **Misc. Appli. No. E 3641/21 for accused's registration details.....P.Exh. 25**
- **Accused's registration report.....P.Exh. 26**
- **Certificate for recorded conversation.....P.Exh. 27**
- **Letter dated 8/2/23 for Davcharl company.....P.Exh. 28**
- **Registration details for Davcharl Company.....P.Exh. 29**

At the close of the prosecution case the accused was placed on his defence in which he opted to give a sworn testimony. He did not call any other witness in his defence. His evidence was as follows:-

DW1 ONE PHILLIP MUTUA KILONZO, the accused herein denied the charges as stated on the charge sheet. He admitted that he resides in Busia where he works as a clearing and documentation of imports agent.

He admitted having interacted with PW1 and clearing the consignment for UAEM as stated in the prosecution evidence.

He confirmed that the email/letter (P.Exh. 3, 4 and 8) were copied to him and that he was approached by PW1 and other board members to assist in finding out what they were all about. He agreed to assist and asked for facilitation, which was paid as stated in the prosecution case.

He confessed that he met the PW1, 2, 3, and 4, on 3/10/20 at Kangundo, and later at Afro-Sayari Hotel, and even admitted that the phone conversation in P.Exh. 6 a, and b, took place. And further that he held other conversations on 7/10/20 and 8/10/20 to follow up on the payment of the advance tax for Ksh. 2.9 million.

He denied having known Aaron Moenga before the engagements that birthed the matter before court.

During cross-examination by the prosecution counsel, the accused stated that he had vast experience in clearing and forwarding of cargo spanning about 15 years.

In further cross-examination he stated that the KRA would have contacted the clearing agent and NOT the client directly, if more taxes were to be paid.

And that he asked the board members how much money they could pay so that he could relay the same to the alleged KRA officials. Which also meant that he acted as the link between the church and the alleged KRA officials.

When asked questions by the court towards the close of his testimony, he confirmed that he knew the consignment in question contained relief goods. And added that, as a clearing agent he knew the taxes that ought to have been paid when clearing relief goods.

The defence case was closed at that point. The accused did not call any other witness in his defence neither did he produce any exhibits in support of his case.

The court has considered the evidence on record as adduced by both the prosecution and the defence witnesses together with the exhibits produced to buttress their respective cases. The court has also considered the written submissions filed by both counsels on behalf of both parties, alongside the authorities sought to be relied upon in support of their respective cases. And the issues for determination are singled out as follows:-

1) **Whether the accused received bribe as charged in respect of counts 1 and 2 herein.**

2) **Whether the accused obtained money by false pretence as charged on count 3 of the charge sheet.**

Firstly as regards the issue of bribe, it is in the evidence of **PW 1, 2, 3, 4, and 13** that the accused requested for a bribe of **Ksh. 2.9 million** first from **PW1, 2, 3, AND 4** as stated on count 1. And then from PW1 as stated on count 2 of the charge sheet, with intent that in consequence he would influence the writing off of the alleged advance tax due to Kenya Revenue Authority from the Grace Children's Home.

PW1 stated in his testimony that when he received the email (P.Exh. 3) allegedly from KRA as authored by Aaron Moenga who alleged to be the Project Manager with KRA, demanding an advance tax for the consignment of relief goods received earlier from the USA as already explained in the body of this judgement, he contacted the accused person who was the clearing agent. And that later on a reminder of the demand letter (P.Exh. 4) and a warning (P.Exh. 8) came through to them, prompting the UAEM board members to instruct the accused to follow up the matter.

The accused person was facilitated to come to Nairobi from Busia where he met the author of the letters and later arranged for the two alleged KRA officials to meet with PW 1, 2, 3, and 4.

It then emerged in the meeting that Ksh. 5.8 million was due and the amount was scaled down to 70%, and later to 50% after the accused successfully negotiated the said reduction. The accused and the alleged KRA officials requested for an amount of Ksh. 2.9 million as a bribe and/or a token so that the fictitious KRA records for the alleged advance tax could be destroyed.

The evidence of PW1 was shared by PW2, 3, 4, and 13 on what transpired between the accused person, the board members and the alleged KRA officials.

The said money was to be paid to the accused, who would then give it to the alleged KRA officials. This was evidenced by the testimony of PW3 who categorically stated during cross-examination by the defence counsel that ***..."we were to pay the money to the accused person, for him to give it them."***

Even the accused in his sworn testimony as DW1, stated***..."that he asked the board members how much they could pay so that he could tell the KRA***

officials." which clearly confirms that the accused negotiated and/or requested for the Ksh. 2.9 million on behalf of the fake KRA officials. He actually acted as a link between them and the board members.

It is important to note that the accused in his sworn testimony confirmed the occurances in this case that led to the matter before court. He also confirmed his participation in the whole transaction that turned out to be un-genuine the same way it was narrated by the prosecution witnesses.

It is my considered view that the mere fact that the accused person negotiated for the reduction of the Ksh. 5.8 million down to 50% thus the Ksh. 2.9 million, and then he began asking the board members to quickly pay the same or face unknown consequences, coupled with the fact that he was to receive the money and pass it over to the fake KRA officials, confirms beyond any reasonable doubt that he requested for the bribe as stipulated on the particulars of the charges on counts 1 and 2 of the charge sheet herein. And that he did it together with the others who were not before the court, those others being the two fake KRA officials.

The same is also evidenced in the recorded conversations between him and PW1, produced as P.Exhibits 5, 6 a, and b, 7, 9 a, and b, 13, 14, 15, 22 and 23 herein. The accused was the one recorded while requesting for that money from PW1 and asking PW1 to hasten the process, and he confirmed in his sworn testimony that he was the one recorded therein.

It has also been confirmed beyond any doubt that the money was to be paid so that the fictitious KRA records for the church over the alleged advance tax amounting to Ksh. 5.8 million could be destroyed or burnt by the said Aaron Moenga and another who were found not to be KRA employees as stated by PW5. PW5 further confirmed that the consignment consisted of relief goods and it was not subject to advance tax. So the whole transaction negotiated by the accused was inexistent.

The law under **Section 6 (1) (a) of the BRIBERY ACT states...." A person commits the offence of receiving a bribe if-**

a) **The person requests, agrees to receive or receives a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly whether by that person receiving the bribe or by another person."**

In the present case, as already established above, the accused requested and agreed to receive the bribe of Ksh. 2.9 million.

It has been established that, the improper activity of destroying the KRA records or waiving the advance tax was the function meant for the said bribe. That very function is the ***"mens rea"*** in this case and it did not exist in the first place since KRA which is a public body charged with tax related duties, does not levy advance taxes on relief goods.

I find that the prosecution has properly demonstrated the two ingredients of the offence of Bribery as laid out in the cases below:-

In **GIDEON MAKORI ABERE –VS- REPUBLIC [2019] e KLR** where it was stated.... ***"From the wording of the two provisions quoted, one can conveniently distil in summary the ingredients of the offence as firstly, one has to request, receive or agree to receive a financial or (other) advantage, there must be the "mens rea" that by so receiving some function or activity should be improperly performed by that person or by somebody else and lastly the function must be of a public nature or of such a nature carried out by a public officer. "***

In another case of **PAUL MWANGI GATHOGO –VS- REPUBLIC [2015] e KLR** **MATIVO J** defined the ingredients of the offence of soliciting and receiving as follows:- ***..."The main ingredients of the offence (soliciting and receiving a bribe) are that the accused must be acting in any capacity, whether in public or private sector or employed by or acts on behalf of another person, that he must be shown to have obtained or attempted to obtain from any person gratification other than legal remuneration, that gratification should be as a motive or reward for doing or forbearing to do, in the exercise of his official function, favour or disfavour to any person. The gravamen of the offence is acceptance of***

or the obtaining or even the attempt to obtain illegal gratification as a motive or reward will complete the offence.

In order to constitute an offence three things are essential; in the first place there must have been the solicitation, or offer or receipt of a gratification. Such gratification must have been asked for, offered or paid as a motive or reward for inducing by corrupt or illegal means, and secondly that someone should be acting in the public or private or employed or acts for and on behalf of another person, or a favour or ask for a favour to render some service."

The two cases above are speaking to the present case and it is therefore my finding that the evidence on record proves that the accused person solicited for the bribe mentioned herein and that he also agreed to receive the same on behalf of the fake KRA employees so as to waive or renounce the advance tax that turned out to be non-existent.

It has also been demonstrated to the satisfaction of the court that the accused acted on behalf of and/or for one Aaron Moenga and another who were not before the court, and further that the alleged tax waiver was a public function that could only be carried out by KRA which is the public body mandated to do so.

The accused's testimony to the effect that he did not commit the offences with regard to Counts 1 and 2 of the Charge Sheet, and that he did not know Aaron Moenga and the other person who masqueraded as KRA officials is hereby dismissed as a mere denial and a bid to evade justice in this case. Since it has been demonstrated that the accused person is the one who introduced those two to the board members and offered to collect the bribe and hand it over to them. It is common knowledge that one cannot introduce to others what he does not know, and one cannot also offer to receive something and deliver it to people he does not know.

The upshot is that the prosecution evidence on record has sufficiently connected the accused to particulars of the offence as stated on Counts 1 and 2 for the offence of receiving a bribe.

Secondly, on the issue of obtaining money by false pretences, it has been established from the evidence of PW5 that the advance tax did not exist and that the said Aaron Moenga and another not before court were merely masquerading and/or impersonating KRA officials.

The accused as a seasoned clearance agent, who had vast experience in the field of clearing and forwarding of imported goods, admitted to have known that the goods he was clearing were relief goods. Having confirmed in his sworn testimony that he knew the taxes one ought to have paid in this case, I take it that he knew that the advance tax was non-existent, but went ahead to push and market the narrative to the board members.

PW 11 and 12 also stated clearly that should there have been an issue with KRA, they would have been contacted first as the clearing company/agents that handled the complainant's goods and not vice versa.

Accused in his testimony acknowledged the fact that KRA would have written to Davcharl logistics company as the clearing agents, and not the client (the UAEM) as it was the case herein.

Accused deliberately ignored all the red flags in the demand for advance tax, and because he was poised to benefit from the bribe, he went ahead to request and push for the same

When approached by PW1 to handle the demand, the accused person requested for facilitation to the tune of Ksh. 20,000/= for a cause that was non-existent.

As already established above the accused person knew or had reasons to believe that the transaction was fake, owing to the red flags mentioned above by the court, but still went ahead to obtained the Ksh. 20,000/=. He knew that the demand and/or the representation for advance tax was false in fact, but he still went ahead to ask the board members to quickly pay the Ksh. 2.9 million to avoid being penalised.

The narrative that the defence was trying to push while cross-examining the prosecution witnesses, that the accused was a lay-person, does not stand in this

case. That line of defence was crushed by the accused himself in his sworn testimony when he stated that he was a clearing agent with experience spanning 15 years, and that he knew the all the taxes that ought to have been paid when clearing relief goods. He also confirmed that he knew the consignment contained relief goods.

He ought to have pointed out to the church board members that the P.Exhibits 3, 4, and 8 were not genuine.

In this case as regards charges on count 3, the prosecution only needed to prove that the accused with intend to defraud, obtained something capable of being stolen from another person through a false representation, knowing it to be false.

This was the finding of the learned judge in the case of **MICHAEL MUTINDA MUTEMI –VS- REPUBLIC [CRIMINAL APPEAL NO. 28 OF 2023 IN THE HIGH COURT AT KIBERA]** where DR. KAVEDZA, J held.....***"The prosecution is required to establish that the appellant obtained something that is capable of being stolen, obtained it through a false pretence, and with the intention to defraud. "***

In the matter before me, as already stated above, the court finds that the prosecution has executed its mandate as laid out in the above case. The Mpesa statements (P.exh. 10) together with the testimonies of PW 1, 2, 3, 4, 5, 6, 10, 11, 12, 13 and that of accused (DW1) in admitting that he received the Ksh. 20,000/= as facilitation fee, proves beyond doubt that the offence cited in Count 3 was indeed committed by the accused person in this case.

And the accused's defence that he indeed travelled from Busia to Nairobi to help the board members, in respect of this charge is hereby dismissed as a mere denial and a well calculated move to defeat justice. For he did not help them, he was instead intending to help himself by receiving the non-existent tax.

The upshot of the foregoing is that, this court finds the prosecution evidence herein to be well presented. The same is cogent, credible, believable and reliable. The witnesses were consistent and did not give the court any reason to doubt their testimonies.

The contradictions cited by the defence in their written submissions, if any, of which this court did not find, are considered to be minor, inconsequential and incapable of watering down the substance of the prosecution evidence as far as the charges in respect of all the counts are concerned. The same is hereby ignored and/or dismissed as immaterial.

In conclusion therefore, I find and hold that the prosecution has discharged the onus of proof as required by the law, and that it has proved its case beyond any reasonable doubt against the accused herein, he is hereby **CONVICTED** accordingly under **SECTION 215 OF THE CRIMINAL PROCEDURE CODE** of all the 3 offences charged herein.

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CELESA OKORE

PRINCIPAL MAGISTRATE

JUDGEMENT DATED, SIGNED AND DELIVERED IN OPEN COURT ON THE 2ND DAY OF APRIL 2025.

In the presence of:-

Court assistant..... Teodidah

Prosecution..... Ms. Manjanya

Accused..... Present

Defence counsel..... Mr. Ciromyo adv

Interpretation..... English

2/4/25