



**Republic v Ondiek & 4 others (Anti-Corruption and Economic Crimes Appeal E012 of 2022) [2023] KEHC 22669 (KLR) (Anti-Corruption and Economic Crimes) (28 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 22669 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
ANTI-CORRUPTION AND ECONOMIC CRIMES  
ANTI-CORRUPTION AND ECONOMIC CRIMES APPEAL E012 OF 2022  
EN MAINA, J  
SEPTEMBER 28, 2023**

**BETWEEN**

**REPUBLIC ..... APPELLANT**

**AND**

**CONCELIA ONDIEK ..... 1<sup>ST</sup> RESPONDENT**

**CHRISTINE CHACHA ..... 2<sup>ND</sup> RESPONDENT**

**THOMAS OMUGA ..... 3<sup>RD</sup> RESPONDENT**

**FRED OCHANDA ..... 4<sup>TH</sup> RESPONDENT**

**FRANCIS IMBO AWUOR ..... 5<sup>TH</sup> RESPONDENT**

*(Being an Appeal from the judgment of the chief Magistrate’s Court at Nairobi (Hon. Makungu) delivered on 4th October, 2022 in Nairobi Anti-Corruption Case No. 10 of 2010)*

**JUDGMENT**

1. This is an appeal preferred by the State against the acquittal of the respondents who were charged with corruption related offences.
2. The Respondents were charged with the following offences: -

“Count 1: Conspiracy to commit an offence of corruption contrary to section 47 (a) as read with section 48 of the *Anti-Corruption and Economic Crimes Act* No. 3 of 2003

1. Concelia Ondieki 2. Christine Chacha 3. Thomas Omuga 4. Fred Ochanda 5. Francis Imbo Awuor:



On diverse days between 1<sup>st</sup> May 2009 and 30<sup>th</sup> June 2009 at Kisumu in Nyanza Province within the Republic of Kenya, conspired to fraudulently acquire public revenue to wit the sum of Kshs. 5,337, 500/= from the Ministry of Education by purporting that the said sum of money had been spent for purposes of training workshops on the Double-shift program for secondary schools for Nyanza Region.

Count 2: Fraudulent acquisition of public property contrary to section 45(1) (a) as read with section 48 of the *Anti-Corruption and Economic Crimes Act* No. 3 of 2003.

1. Concelia Ondieki: On diverse days between 29<sup>th</sup> May 2009 and 10<sup>th</sup> July 2009 at the Kisumu Polytechnic in Nyanza Province within the Republic of Kenya did fraudulently acquire public property namely Kshs. 8,055,000/- by purporting that the said sum was due to Savanna Grassland Hotel for having accommodated workshop participants which was false.

Count 3: Fraudulent acquisition of public property contrary to Section 45 (1) (a) as read with section 48 of the *Anti-Corruption and Economic Crimes Act* No. 3 of 2003

2. Christine Chacha: On diverse days between May 25, 2009 and May 29, 2009 at Jogoo House in Nairobi Province within the Republic of Kenya did fraudulently acquire public property namely Kshs. 262,000/- by purporting that the said sum was paid as transport reimbursement to participants attending double shift workshop at the said Nyeri Technical which was false.

Count 4: Fraudulent acquisition of public property contrary to section 45(1) (a) as read with section 48 of the *Anti-Corruption and Economic Crimes Act* No. 3 of 2003.

2. Christine Chacha, on diverse days between May 25, 2009 and May 29, 2009 at Jogoo House in Nairobi Province within the Republic of Kenya did fraudulently acquire public property namely Kshs. 54,000/- by purporting the said sum had been properly spent for purposes of paying the accommodation for resource persons facilitating a workshop on double shift workshop at the said Nyeri Technical. which was false.

Count 5: Fraudulent acquisition of public property contrary to section 45 (1) (a) as read with section 48 of the *Anti-Corruption and Economic Crimes Act* No. 3 of 2003.

2. Christine Chacha, on diverse days between 1<sup>st</sup> June 2009 and 10<sup>th</sup> June 2009 at Jogoo House in Nairobi Province within the Republic of Kenya did fraudulently acquire public property namely Kshs. 226,000/- by purporting that the said sum was paid as transport reimbursement to participants attending double



shift workshop at the said Mombasa Polytechnic University College. which was false.

Count 6: False accounting by a public officer contrary to section 331 (1) and (2) of the *Penal Code*, Cap 63 Laws of Kenya.

1. Concelia Ondiek 2. Christine Chacha 3. Thomas Odhiambo Omuga On or about June 30, 2009 at Jogoo House Nairobi, being Senior Education officers in the Ministry of Education in charge of public revenue to wit Kshs. 3,334, 600/- intended for sensitization workshops for secondary schools on double-shift program, knowingly furnished a false schedule to the said Ministry purporting it to be a just and true account of the expenditure of the said funds.

Alternative Charge to Count 6: Giving a false document by agent contrary to section 41 (2) as read with section 48 of the *Anti-Corruption and Economic Crimes Act* No. 3 of 2003.

2. Christine Wegesa Chacha: On or about June 30, 2009 at Jogoo House Nairobi, being an employee of the Ministry of Education tasked with conducting sensitization workshops for double-shift program for secondary schools in Mombasa, Nyeri and Kisumu, to the detriment of the said Ministry knowingly gave false imprest surrender return for Kshs. 3,334, 600/= purporting it be a just and true account of the imprest allocated to her for that purpose.

Count 7: Dealing with suspect property contrary to section 47 (l) of the *Anti-Corruption and Economic Crimes Act* No. 3 of 2003.

4. Fred Ochanda: On July 11, 2009 or thereabout at Kenya Commercial Bank Kisumu within Nyanza Province, received Kshs. 1,000,000/- which he had reason to believe to have been acquired in the course of a corrupt conduct.”
3. The background of the above charges was a programme put together by the Ministry of Education to train secondary school teachers under the Kenya Education Sector Support Programme (KESSP). The training was done through sensitization workshops at the Mombasa, Kisumu and Nyeri Polytechnics. It was alleged that public funds allocated for the Double Shift workshops was lost.
4. To prove its case the prosecution called 47 witnesses whose evidence was very aptly summarised by the learned trial Magistrate as follows:-
5. PWI, Edward Karega Mutahi was the Permanent Secretary in the Ministry of Education. sometimes between January 2003 to June 2010, he was the Accounting Officer for the Ministry of Education: in charge of ensuring that public funds were properly used. One of his duties was to authorize expenditure for Programs generated by the program managers. mostly the Directors within the Ministry, or through the Education Secretary: which would be placed before him as the Permanent Secretary (PS) for approval. At the time, the Ministry had 23 programs running, one of which was the Kenya Education Sector Support Programme (KESSP), which constitutes the context of this suit. Accused 1 (Concelia), the acting Director of Secondary and Tertiary Education, presented the Budget vide an internal memo dated 4<sup>th</sup> May 2009 presented as P EXH 1. The same was titled "Double Shift Sensitization for Secondary Schools 20th - May 23, 2009. It targeted 900 stakeholders, being secondary school teachers nationwide. PWI (Karega) approved the memo on the same date thus setting the stage for the roll out of the program in three identified institutions: namely Kisumu Polytechnic, Mombasa and Nyeri



Polytechnics. This was done between May and June 2009. Attached to the internal memo was a Budget for various items such as transport reimbursements, accommodation, hall hires air time, lunches, air tickets, among others. with the total coming to Kshs. 14,608,800 Out of this. Kshs. 3,334,000 was set aside as imprest money while the rest was to be utilized for accommodation purposes. He testified that through an Internal Audit Report, a number of flaws in the way the Program was run were raised, particularly on the authenticity of the documents used to surrender the imprest. This prompted him to suspend all the officers involved in the exercise pending further scrutiny and report the same to the Ethics and Anti-Corruption Commission (then the Kenya Anti-Corruption Commission) for investigations and action.

6. PW2 Elias Kirnani Macharia was an Accountant at the Ministry of Education in the year 2009. He was in charge of the Cash Office at the Accounts Department: and one of his major duties was to receive payment vouchers from the respective departments and pay the same through cash or cheque, the said vouchers having passed through other internal processes. He testified that an Imprest Warrant for Kshs 3,334.600/= prepared on May 14, 2009 in the name of Christine Chacha (2<sup>nd</sup> accused herein) (PEXH2) was presented to him for payment, which he did by giving her the said amount in cash upon which she duly signed for the same. He outlined that before such a payment was done, the same had to go through the accountant and also other internal processes. In this case the A.I.E holder, Concelia Ondiek (the 1<sup>st</sup> accused herein) signed for the same on May 14, 2009 and it was counter signed by one Kimanathi, the Director of Policy and Planning. It is this document that mandated him to give Imprest to the second accused herein, Christine Chacha.
7. PW3, PW4 and PW5 who were lecturers at the Kisumu Polytechnic at the time in issue stated that they were all involved as facilitators in the Double Shift Sensitization Program. PW3: Wycliffe Odhiambo was, at the material time, the Head of Computer Studies & Mathematics at Kisumu Polytechnic having worked there since 2004. On May 17, 2009, he was approached by Thomas Omuga (5<sup>th</sup> accused), to join him at Vunduba Hotel Kisumu and identified as a trainer for the Double Shift Workshop slated for Kisii. He travelled to Kisii on May 24, 2009 whereby he met the 1<sup>st</sup> accused who gave him training materials for use during the Workshop being conducted at Mash Park Hotel. PW3 was placed in charge of the Programme and confirmed that about 69 persons attended the workshop between May 24, 2009 - May 27, 2009. As the overall coordinator, he was in charge of logistics which included reimbursement of transport to participants, stationary, payment of facilitators, rapporteurs, among other duties. He testified that of the Kshs. 100,000/= given to him in cash by Concelia for overall coordination, the expenditure was broken down as follows: 69 participants were paid 1,000/= each for transport reimbursement, payment to the facilitator at Kshs. 12,000/-, payment to the rapporteur, stationery and lunch expenses. He also reiterated that participants signed attendance sheets every morning for the three days, and also, payment schedules which were prepared upon their transport reimbursement. He sent these documents together with the Rapporteur's report and receipts to Concelia (the 1<sup>st</sup> accused). Upon being shown the transport reimbursement schedule, produced as PEXH 3A, PW3 testified that there were some alterations showing that Kshs. 2,000/= was paid out instead of the actual Kshs. 1,000/= that was paid out by him as reimbursement (PEXH 3B). He pointed out these anomalies to the investigations team. PW3 also conducted a workshop for Nakuru schools between 2<sup>nd</sup> - June 5, 2009 at the Vunduba Hotel in Kisumu. As the facilitator, he confirmed that he was paid Kshs.4,000/= per day. He submitted the report and attendance sheets to Concelia (A1) at the conclusion of the workshop. He denied having been paid Kshs. 2000/= as indicated in PEXH6 Transport Reimbursement for June 2009 Fax No. 0xxx.
8. PW4: Anthony Omwange Maangi, a lecturer at Kisumu Polytechnic, was introduced to Concelia (A1) and to the Double Shift Programme by Wycliffe (PW 3). Together with PW3, they travelled to



Kisii Mash Park Hotel to facilitate the workshop for 3 days between 24<sup>th</sup> - May 27, 2009 after which he confirms being paid Kshs.12,000/= for facilitation (at the rate of 4,000/= per day) together with Kshs.1,000/= transport reimbursement. He confirmed signing for Kshs.1,000/= as per PEXH 3b and not Kshs.2,000/= and denied being involved in alteration of the figures. PW4 also participated in the Kisumu Double Shift Workshop at Vunduba Hotel between 2<sup>nd</sup> - June 5, 2009 where about 35 - 40 people participated. He was a facilitator at the workshop and was paid at the rate of Kshs.4,000/= per day. He was also reimbursed transport of Kshs.1,000/= paid to him by Omuga, whom he positively identified in court. He disowned the writing on PEXH 6 which indicated that he had been paid Kshs. 2.000/= for transport reimbursement. In cross-examination, PW4 confirmed signing PEXH 3(a) as No. 68 on the list and was paid Kshs. 1000 by Wycliffe (PW3) on the last day of the workshop.

9. PW5: Charles Opiyo Owuor, was a teacher at the Kisumu Polytechnic and the Assistant Dean of Students. One of his dockets as Dean of students was accommodation at the institution. He confirms that between 2<sup>nd</sup> - June 5, 2009, he directed participants of the Double Shift workshop to Vunduba Hotel, which the Polytechnic had outsourced for accommodation. He also facilitated the workshop upon request by Mr. Okumu and Omuga (3<sup>rd</sup> accused) standing in for a facilitator who failed to turn up. He confirmed being paid facilitation fee of Kshs. 12,000/= (@ the rate of 4000/= per day) at the end of the session by Mr. Omuga (3<sup>rd</sup> accused person) who was in charge of the workshop: for which he signed on the payment schedule. PW5 remembered interacting with Concelia (1<sup>st</sup> accused) from the Ministry of Education, and also with Chacha (the 2<sup>nd</sup> accused), who only made remarks during the workshop. Some of the teachers from various schools who were invited, and attended the Workshops in the identified institutions included PW6, PW7, PW9, PW10, PW11, PW12, PW13, PW14 amongst others.
10. PW6: Edith Mueni Nzevela, a teacher at Ruaraka High School, together with 5 other teachers from the school participated in a Double Shift Workshop in Nyeri between 23<sup>rd</sup> — May 27, 2009. There were 60-70 participants in the workshop. Chacha, (2<sup>nd</sup> accused) was among the facilitators. She was given Kshs. 10,000/= at end of the workshop to give each teacher from Ruaraka Kshs. 2,500/= as transport reimbursement. She paid 4 teachers and she had each of them write their names and counter sign against a list. She however noted that the transport reimbursement schedule presented to court had names of teachers who were not from Ruaraka High School; for instance; No. 14 Stella Kendi, No. 9 Naomi Kithake, No. 26 Esther Kioko and No. 27, whom she did not know. She could not tell whether these persons were paid or not. Further to this, she testified that the workshop was held at the Nyeri Teachers Training Institute and was only conducted for two days. She confirmed submitting the list to Chacha (2<sup>nd</sup> accused person). Further, she averred that she did not receive Kshs. 67,000/= but only Kshs.10,000/=. The transport reimbursement was entered as PE-XH 7 (a), (b) and (c). Upon cross examination, PW6 reiterated that she only paid transport reimbursement to the persons listed as number 1 - 6 who were from one school.
11. PW7: Agnes Wangui Chege, the principal of Ruaraka High School at the material time recalled that sometime in May 2009, she was identified by Christine Chacha, (2<sup>nd</sup> accused) to select Head of Departments to take part in the Double Shift workshop, which was to take place between 24<sup>th</sup>-27<sup>th</sup> May 2009. She selected six participants (herself included) to attend the Nyeri workshop which was held at Nyeri Technical Institute. The participants were Ms. Ndambiu, Ms. Edith Mueni (PW6). Lubobori, Mr. Karugo and Mr. Oguto. The training was facilitated by Chacha (2<sup>nd</sup> accused). She confirmed being paid Kshs 4,000/= by Chacha A2 for facilitation. A further Kshs 2000/= was also given to her as transport reimbursement by Edith (PW6). She corroborated PW6's statement that teachers listed as No. 14,9 and 10 (as per PEXH 7b) were not teachers from Ruaraka High School, as were those listed as numbers 25 and 26 in PEXH 7c. Peter Ochieng Akala testified as PW8. He was the driver of GKS



- 927 at the material time. He was engaged in the workshop then and confirms that the surrender of the fuel imprest was by work ticket which was produced in evidence as P EXH 8B. However, the original work ticket for the said vehicle was recovered at Kisumu Polytechnic as a photocopy and produced in court as PE-XH 8A.
12. PW8 pointed out the inconsistencies in the two documents such as the amount of fuel indicated in P EXH 8B. being the work ticket used to surrender the imprest, and P EXH 8A, which was a photocopy of the original work ticket for the motor vehicle GKS 927. It was his testimony that the amount of fuel indicated in PEXH 8B was beyond the capacity that the vehicle could hold. On the issue of purchase of fuel, exhibited by receipts PEXH 8B (i) to (iv), he discounted the same stating that no fuel was purchased on the dates indicated therein.
  13. PW9: Loice Wambui Mwangi, a teacher, and Head of Department, also attended the workshop on Double Shift Sensitization at Nyeri in May 2009. Even though she did not attend the workshop, she confirms that 8 teachers together with the Deputy Principal from their school did attend. Upon being shown PEXH 7a and b (which purported to show names of teachers from their school, she disowned the names appearing as No. 7 (a) and (b) on the list, Sarah W. Mwangi, and No. 11, Johnson Karanja, No. 30 Jedel Kimathi Chokere, No. 42 Boniface Jane Wangari.
  14. PW10: Timothy Ndirangu Mwangi; the Principal of Nakuru Day Secondary School, between 2001 and 2011 confirmed that the school received an invite to attend the May 2009 Double Shift Program, which was being held in Kisumu. Together with his Deputy principal, one Lydia Muthoni Wangare, they organized for 13 teachers, who are Heads of Department to attend the workshop (including himself). He identified the teachers in attendance as Irene Kinuthia, Geoffrey Wachira, Jackson Maina, Daniel Waweru Keraya, Catherine Wantogo, Margaret Lycyline, Eveline Machoka George Osier-no Nyabeu, Paul Waweru Ngugi, Margaret Wanjiru, Lawrence Gitonga, Florence Wanjiru. Timothy Mwangi. The 3-day workshop was held at Hotel Vunduba. He avers that Omuga, the 3<sup>rd</sup> accused person herein, was the facilitator of the workshop: while Ms. Concelia (the 1<sup>st</sup> accused) was in attendance and actually closed the ceremony. Further, that transport reimbursement was given to each of them at Kshs.1.200/= by Mr. Omuga (the 3<sup>rd</sup> accused) for which they signed attendance sheets for the 3 days. that is 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> June 2009. (See P EXH 9 (a) (b) (c). Whereas he admits having signed a Transport Reimbursement Form: he disowned the details as shown in EXH 6 thereof. He confirmed his name as appearing on paper 2 Serial No. 30 but disowned the signature and also the amount indicated thereon at Kshs. 2,500/=. He clarified that the amount they received was Kshs. Certain names that appeared on the list purporting to be teachers from Nakuru Day Secondary School were also disowned. These names included John Kamau, Peter Muhando, Keron Nguma, Kairuki C.N., Elizabeth Kariuki, Peres Migau, Geoffrey Chege, Sylvester Maluhi, Ken Odawa, Paul Okello, Lyche Atieno, Omollo Soldier, Lilian Akecho, Robert Mugo, Joles Base, Betty Weru, Monica Kirnani, Rosebeles Wachome, Catherine Nekesa, Stephen Amode, Andrew Kioko, Daniel Kisia, Daniel Kamba and Shant Ali.
  15. PW11: Daniel Kiprof Cheruiyot, by then the Principal of Kapsoya Secondary School in Eldoret, was informed about the Double Shift Programme at Kisumu by the District Education Officer Eldoret East who asked him to contact Concelia (1<sup>st</sup> accused) of the Ministry of Education. He avers that he was directed to report with 12 teachers to the Kisumu Workshop. He confirmed those who attended as: Patrick Wamea, Christine Mukesa, George Odera, Reuben Jonda, Wycliffe Aguei, Daniel Kiprof, Janette Kamau, Teresa Paul, Dorcas Koech, Joyce Omelwa, Getrude Kyeni, Zipporah Chelenga, with one abstention. Confirmed they attended Kisumu Vunduba Hotel. Not all could fit at Vunduba, others were taken to Hotel Masa for accommodation. He also confirmed that the overall co-ordination was done by Omuga (3<sup>rd</sup> accused) while Concelia, 1<sup>st</sup> accused attended to close the workshop. That each



- participant was given Kshs.1000/= by Omuga as transport reimbursement. Attendance lists for the 3 days were duly filled and names and signatures indicated on the same. However, on PEXH 11(a) he disowned the signature and handwriting therein as not his. The said document had listed 21 teachers from Kapsoya as attendees whereas he reiterated that it was only 12 who were nominated by the school to attend the workshop. He disowned the entry in PEXH 10 (b) that showed payment reimbursement of Kshs. 2500/= instead of 1000/=. Further to this, there were names of 19 teachers indicated in PEXH 10(d), (h), (j) and (k) who it was claimed were teachers at Kapsoya yet they were unknown. As a principal, he confirmed that those names were not for his teachers at Kapsoya Secondary School.
16. PW12: Patrick Wafula Nalianya, a teacher at Kapsoya Secondary School, invited by his Principal, Daniel (PW11), attended the Double Shift Workshop at Kisumu. He mainly corroborated PW11's testimony about the number of teachers from the school who travelled to Kisumu, 12 of them having travelled in one vehicle to Kisumu on 2<sup>nd</sup> June 2009. He also corroborated the issue of their accommodation at Hotel Mash Park Hotel due to overflow from Vunduba Hotel; the co-ordination from Ministry of Education by Omuga (3<sup>rd</sup> accused), the closing ceremony; the signing of the attendance registers every morning, and the Kshs. 1000/= given for reimbursement. He further confirmed the signature and handwriting in PEXH 9(b) 32 as his. On P EXH 11(a) whereby he had been listed as 37, he disowned the particulars, the handwriting, and the amount allegedly paid out to him. He also disowned entries in PEXH 10(b), listed as No 37, claiming that the name, handwriting, signature, TSC number, and amount purportedly received at Kshs.2500/= as a falsity.
  17. PW13: Livingstone Mukasa: a teacher at Kapsoya also confirmed attending the workshop at Kisumu and largely corroborates PW11 and PW12's testimonies as to what transpired at the Kisumu Workshop. He disowned the alleged signature and writings made in his name on PEXH 11(a), listed as No 22; and also, on PEXH 10 No. 22 for transport reimbursement of Kshs. 2,500/=.
  18. PW14: Lucy Mutai: A teacher at Kericho Day Secondary School; attended the Double Shift Program between 26<sup>th</sup> -May 27, 2009 at Mash Park Kisii for 3 days. She confirmed that at the close of the workshop, each participant was given Kshs. 1000/= as transport reimbursement plus a Certificate of Attendance; and that in total, 12 teachers attended from their school. EXH 12 a -She confirmed her name, signature, ID number and school in row 18 of PEXH 12 as produced by the prosecution. However, she disowned a transport reimbursement schedule as exhibited under PEXH 3(a) with amount indicated as Kshs.2000/= at No 59, as opposed to EXH 13(b) where amount is Kshs.1000/= workshop held at Kisumu. The same scenario pertained to PW15 John Kibet Langat who confirmed receiving only Kshs 1000/= and not Kshs as transport reimbursement for the Kisii Mash Park workshop. Others who attended the Kisii Workshop included PW17, David Ngachu Ngatia, PW19 William Meso Omollo, PW20 Catherine Julia Gatwiri. PW21 Wilson Rukwaro Theuri, and PW23 Patrick Okumu Otieno. PW41, Millicent Akinyi also disowned her alleged signatures and writing on the document(photocopy) presented as PEXH16. They all confirmed attending the Workshops at Kisumu, Hotel Vunduba. They all confirmed signing attendance sheets with Kshs 1000/ = as transport Reimbursements and not Kshs 2,500/ = as appeared in PEXHS PA, B C. Other teachers who attended the various Workshops held at Nyeri, and Kisumu also testified as to the falsity of the entries. These included PW16, Jason Munyeri Mwangi, PW18, Elisha Laban Wandera, PW24 Mwangi, Joseph Njau, and PW25 John Guandaru Kimathi. Out of the 42 entries in EXH 15(a), PW16 signed out only the names as Entry No. 6 Margaret Kagika, entry 7 Elizabeth Murage only. The same scenario ensued in EXH 15 (c) for June 29, 2009 whereby only 2 entries that is entry No. 3 for Kagika Margaret and No. 7 for Elizabeth Murage could be confirmed as genuine teachers of the school. Similarly, in EXH 15(d) for June 30, 2009, out of the 36 entries, he pointed out Entry No. 2 Amos Mwangi Ndegwa as the only teacher from the school. All these attendance sheets bore the signatures and stamp of the Deputy Principal Nyeri Technical Training Institute.



19. PW22: Bernard Onyango, the Principal Kisian Secondary School, previously at Lions High school in Kisumu testified that he did not attend the Double Shift Workshop at Kisumu even though he was aware that 12 teachers from the school attended. However, he only came into the case because his name appeared on a list in EXH 10(d) yet he did not attend the workshop (see entry No. 8). Disputed TSC/ID numbers name Bernard O. Onyango Lions High School; disputed signature and amount of Kshs. 2,500/= He was the only Bernard in the school. Also disputed entries made in EXH 10(j) of Kshs.2,500/=.
20. PW26: George Oyoro Gaya worked as the Chief Accountant at the Ministry of Education sometimes in 2008. Among his duties were authorizing payments and imprests, while making sure that the same were properly surrendered. He recalled dealing with an Imprest for the Double Shift Workshop whereby the Imprest Warrant, produced as PE-XH 2 was duly filled by the acting Assistant Director of Education, Christine Chacha (accused 5) herein. The same was for the amount of Kshs. 3,334,600/= meant for facilitation of the workshops set to run from 20<sup>th</sup> - 29<sup>th</sup> May 2009. His approval of the payment confirmed that it had gone through all the necessary procedures and approvals and that the same was charged against the Donor Funds Project Account. Among the supporting documents he considered were the approved internal Memo and approved work plan. He went on to state that the applicant. in this case, Christine Chacha was to account for it once the activity was done; through an itemized expenditure breakdown after which she would then surrender the Imprest. Mostly, the triplicate copy of the Imprest warrant would be used in the surrender attaching documents that support the surrender. All in all, his testimony hinged on his confirmation that the release of the Imprest amount was properly done as per accounting principles.
21. PW27: John Mureithi Mbugu worked at the Ministry of Education Examination Section (though on interdiction as at time of trial). His work at the section involved examining vouchers for payment. processing and also surrender vouchers. Upon being shown a Payment Voucher No. 70 011674, he confirmed signing a surrender voucher for Imprest of Kshs.3,334,600/= issued to Christine Chacha (voucher PEXH7). His role was to go through all documents attached to confirm they tallied with the Imprest issued. He confirmed examining the documents with a red pen. He went on to state that the voucher was surrendered by Christine Chacha who was the A.I.E holder in charge of funds and he was satisfied that the figures tallied with the Imprest. The only issue he raised was on 22<sup>nd</sup> July 2009 about lack of transport receipts in the transport reimbursement schedule but this was addressed by Concelia (A 1) as per Memo (P EXH 35).
22. PW28: Edwin Ochieng Wagwa is an employee of Kisumu Polytechnic, having worked there for over 25 years as Senior Accounts Assistant. He recalled that in May 2009 the institution provided accommodation for a workshop. He worked directly under Fred Ochanda (the 3<sup>rd</sup> accused), the Finance Officer and confirms the position that they received funds into the institution towards providing the full board accommodation. Evidence was also adduced by the prosecution about the issue of accommodation for resource persons at the Nyeri workshops. PW29, Agnes Wanjiku Wachira previously worked at Banana Leaf Hotel Nyeri as Hotel Manager around the year 2009. She remembered attending to her normal duties sometimes between 24<sup>th</sup> - 26<sup>th</sup> May 2009, but was categorical that they did not attend to any clients from the Ministry of Education. She disputed a certain receipt of Kshs. 54,000/= purportedly issued by the hotel as the same was not in their books and its issue were not as per hotel procedures. She noted that the receipt PEXH 27 dated 25<sup>th</sup> May 2009 had a different color, with a missing logo and half the size of their normal receipts. She also picked out the accommodation figure as higher as their room rates were @1200/= per day and not Kshs.4,500/= In her testimony, she reiterated that nobody else issued receipts for the hotel during the entire period of May to December 2009 as she was the one in charge of the facility then. More teachers from schools



mostly within the Nyeri region testified as PW30, PW31, PW32, PW33, PW34 and PW35 also testified in court.

23. PW30: Florence Wachira; the Principal of Gatugi Girls was sometimes in 2009 asked to send 6 teachers to attend the Double Shift workshop at Nyeri Technical Institute on May 24, 2009 but was only able to send 3 teachers instead; to wit Joseph Ndegwa Wachira (PW32), Mary Wangui Mwangi (PW 31) and Robert Weru Wandai(PW33). Upon being shown PEXH7A being a Transport Reimbursement schedule for 24<sup>th</sup> May 2009 allegedly for other teachers from her school, she could only pick out the 3 names as mentioned earlier. She was not able to identify with the other names to wit, Stephen Kamau, Benson Wainaina, Samuel Njuguna. Anthony Gachengu. The situation was the same in PEXH7C and PEXH7D.
24. PW31: Mary Wangui Mwangi is also a teacher at Gatugi Girls. She was invited to attend the Double Shift Workshop at Nyeri Technical between 23<sup>rd</sup>- 27<sup>th</sup> May 2009. She was accompanied by 2 other teachers from the school, to wit, Robert Wandai and Joseph Wachira. She received Kshs. 500/= as Transport reimbursement upon signing a sheet of paper. which amount was paid out to her by a teacher from their school. She disputed the entry showing that payment was made to her of Kshs. 2,500/= (EXH7C). The coordinator of the workshop, she recalled, as Chacha(A2).
25. PW32 Joseph Ndegwa Wachira and PW33 Robert Weru Wandai also teachers from Gatugi Girls reiterated in their testimonies that they received Kshs 500/= as transport reimbursement and not Kshs 2,500/= as indicated in the schedules produced as PEXH 7C. They were all categorical that they saw Chacha as coordinator and could positively identify her in court. Whereas PW34: Moses Lubobori a retired teacher, previously based at Ruaraka High School attended the Nyeri Workshop and confirms that he was given Kshs. 2,500/= as transport reimbursement, and duly signed for the same. He confirmed his details on EXH7A as correct. He could not recognize names of teachers on EXH7C allegedly from Ruaraka High School to wit, Serial No. 26 Esther Kioko Serial No 26 Kabwe Joyce as they were not teachers from the school. Having worked at Ruaraka for more than ten years, he knew all the 28 teachers at the school by name as he was also the Dean of Curriculum. He identified the 2<sup>nd</sup> accused person positively in court. For the workshop that took place at Mombasa Polytechnic, PW35, Lena Omboga previously of Star of the Sea Secondary recalled attending the workshop on Double Shift that took place between 2<sup>nd</sup> — 4<sup>th</sup> June 2009 at Mombasa Polytechnic, and which was facilitated by 2<sup>nd</sup> accused (Chacha) and other officials. She was refunded Kshs. 500/= for fare after filling out name, TSC details and signature. However, upon being shown EXH 26E, being a Transport Reimbursement for Double Shift, in which she appeared as serial No. 11, disputed amount of Kshs. 2,500/= the signature and handwriting. PW36 Dominic Owuor, a teacher at Star of the Sea High School, also attended the Workshop and received Kshs. 500/=. Shown EXH26D being a Transport Reimbursement Schedule Folio 36, whereby the names and details correct, save for amount of Kshs. 2,500/= and signature plus handwriting disputed. Could identify 2<sup>nd</sup> accused as one of the facilitators.
26. PW38: Henry Rure Nyanaro and PW39 Dalmas Arua Jorobo on the other hand were secondary school teachers who did not attend any of the workshops. When PEXH 26B and 26 C which were Transport Reimbursement forms in respect to a Double Shift workshop held at Kisumu Polytechnic in June 2009; were exhibited to them, they disowned some of the details entered therein, including the signatures against their names, purporting that they had attended the said workshops.
27. PW37 Calvin Michira Nyamwaya also did not attend any Kisii workshop. Upon being taken through EXH 26B which was a Transport Reimbursement form; he confirmed his details therein, to wit, name and ID number, but disputed the handwriting, signature and amount of Kshs. 2,500/ = said to have



been given to him as a refund. He also did not send any teacher from his school and from the list shown to him could not identify anyone from his school who attended the workshop.

28. PW40: Wilson Yegon, the Manager of Mash Park Hotel Kisii since 2002, confirmed in evidence that officials from Kisumu Polytechnic booked the hotel between 24<sup>th</sup> May 27, 2009, hosting two groups of 85 people each. Invoiced Kisumu Polytechnic Invoice No. 3356 for Kshs. 637,500/= raised for 85 people. Double Shift for Secondary Schools.
29. To confirm the holding of the workshops at Kisumu, the accountant of Hotel Vunduba; Jackton Otieno Nyawere testified as PW42. He confirmed that 45 people attended the workshop and that he raised Invoice No. 1555 for Kshs. 334,000/=for accommodation. He also reiterated that their hotel carried out several workshops held by Kisumu Polytechnic during the period in question.
30. PW43: Bernard Owino Oduor stated on oath that he used to work as a waiter at Savanna Guest House during the period in question. However, he was stepped down by prosecution and was not recalled to testify again. In support of prosecution's case, a Principal Accountant at the Ministry of Education; Muthoni Rachel Ndungu testified as PW44. She worked at the Ministry of Education between 1990 - 2010. Sometimes in 2009, she was assigned the duty of authorizing vouchers and all payments. She recalled authorizing an Imprest of Kshs. 3,334,600/= produced as PEXH 2 vide Imprest Warrant No.0403794 issued to Christine Chacha through a Payment Voucher produced in court as PEXH17. She took court through the preauthorization processes, and confirmed that there was an internal memo and Budget (PEXHI) itemized and detailed, duly approved by the Permanent Secretary PWI, which was the document used for authorizing the said Imprest warrant.
31. PW45, Donald Stephen Ngombo worked at the Mombasa Polytechnic as Manager Hospitality at the material time. He recalled making reservations in May 2009 for Ministry of Education Double Shift workshop between 1<sup>st</sup> - 4<sup>th</sup> June 2009. Further, that he was asked to do quotation for 100 participants (Kshs 3,500/= x 3 days x 100 pax) Quotation - PEXH51 Kshs.1,050,000/-. He confirmed the attendance of the 103 guests for the 3 days for conference and accommodation. As per PEXH 19, quotation was for the Workshop running between 18<sup>th</sup> - 21<sup>st</sup> May 2009, while the date of quotation was 7<sup>th</sup> May 2009. He confirmed that the number of participants differed by 3 persons as they were 103 and not 100. He also confirmed that the dates of the workshop could change depending on the circumstances: as was the case in this instance. It transpired that the Mombasa Polytechnic was eventually paid Kshs 1,081,500/ = for the workshop.
32. PW46 Philip Yego testified as the Document Examiner. The examiner provided his academic credentials in the field of Chemistry and Forensic Science: and his experience having worked as a Forensic Document Examiner since 2009. He testified that at the material time, he was working at EACC, whereupon he was deployed back to the DCI. He received a request by the Investigation Officer through Exhibit Memo Form received on 30<sup>th</sup> May 2018 of even date (P EXH 52). His main task was to compare handwritings and signatures from various exhibits A1 - 46 being questioned documents. B5 - B13 being handwriting and signatures of Ms Concelia, C1 — C 9 being specimen handwritings and signatures of Thomas Omuga, D1 D6 specimen handwritings and signatures of Christine Chacha, E1 -E6 specimen handwritings and signatures for Francis Imbo, F1 - F 52 specimen handwritings and signatures of participants, and G known handwritings and signatures of Ms Concelia Ondiek. PW46 also examined schedules of participants alleged to have attended trainings in all the three regions and found that the signatures and handwritings were not made by persons alleged to have made them. He also found some of the exhibited documents bearing similar handwriting and signatures when compared to the specimen signatures and known handwritings. He presented his elaborate report which was produced in evidence as PEXH 93. His report lent credence to the assertion by some of



the participants who testified in court that indeed they did not sign for the monies stated: and that some of the schedules had alterations or super impositions against their names. The investigating officer in this case, Anthony Kahiga, brought up the rear of the prosecution's case by testifying as PW47. As a Forensic Investigator at the EACC, he was assigned the duty of investigating an alleged misappropriation of funds at the Ministry of Education, meant for the Double Shift Sensitization Workshops that were to be held across the country. The complaint was that there was misappropriation of imprest to the tune of Kshs. 3,334,600/= by one Christine Chacha (A2) who had used forged documents to surrender the said imprest. He visited the Ministry of Education and collected various documents that were relevant to the investigations. Among the documents recovered was an Internal Memo dated 23<sup>rd</sup> April 2009, (PEXH 1) directed to the Permanent Secretary: and authored by the 1<sup>st</sup> accused person, Concelia Ondiek. In it, she sought the approval by the PS; of the budget of Kshs. 14,608,800/= towards facilitating the Double Shift Sensitization Workshop in various regions. He went on to interview the Permanent Secretary, Dr. Karega Mutahi (PW 1) who confirmed on oath, that he approved the said Budget with the Programs to run as scheduled. It was PW1 who raised the red flag when the Ministry's Internal Audit Reports unearthed flaws in accountability system for the funds and so reported the matter to the EACC. This is how the 1<sup>st</sup> and 2<sup>nd</sup> accused persons, being Senior Ministry of Education Officials ended up being charged. Among the other documents he retrieved included an imprest surrender voucher (PEXH17) marked in the name of Christine Chacha, the 2<sup>nd</sup> accused person herein. The said voucher was the specific schools where the teachers were said to be working. He interviewed several of those teachers who had been reflected as having attended the Double Shift Infrastructure Workshop that was held at Marsh Park Hotel between 24<sup>th</sup> - 27<sup>th</sup> May 2009 and were allegedly paid. He also interviewed those who had allegedly attended workshop at Hotel Vunduba and Hotel Maryland in Kisumu in respect to the transport reimbursements had 18 lists attached to it, which allegedly bore the names of teachers from various regions such as Kisumu, Kisii, Nakuru, Eldoret, Kericho and Kakamega among others. The 18 lists were produced as Exhibits 10a, b, c, d, e (IOa — 10n) and Exhibits 26a, b, c, and g. These lists involved transport reimbursements to teachers. PW 7 widened the scope of his investigation beyond the documents by travelling to the Kisumu region in confirmed attending the training but his name was missing from the list attached to this voucher. He was able to single out names of teachers whom he had sent to the workshop; he was also able to point out names of teachers indicated as coming from Kisumu Day and who were not coming from the school. He also interviewed the school head, facilitators and even some finance officials from the Kisumu Polytechnic. Concerning the same, he stated:- "What came out is that some of the names did not exist in those schools. For instance, in MFI 10(c); a lady called Atel Millicent Akinyi who testified as PW41, Okello Nobett Juma from Lions High (who did not testify) .... PW47 also visited Kericho and interviewed the Head Teacher together with teachers from Kericho Day. As with the rest of the cases: the interviewed teachers who mostly disputed the amounts received as reimbursements. As part of his widening scope, he also visited Eldoret where Kapsoya School is situated whereby he interviewed the principal plus individual teachers. In all these schools, it became clear that some of the facilitators for the workshop were Wycliffe Okumu Odhiambo (PW13) and Anthony Maangi (PW 4). He went on to state: "We met the principal who identified teachers who came from his school, and also identified those who indicated as coming from his school yet they were not. We talked to individual teachers and they talked of having been reimbursed at Kshs. 500/= each but upon looking at the lists attached to the voucher, they indicated that the names were not written in their hands and the signatures were not theirs and also. they did not receive the Kshs. 2000/— indicated therein...." It is on this basis that the Investigating Officer (PW 47) took his investigations, on 13<sup>th</sup> January 2010, to Jogoo House. A search was carried out at the office and it yielded documents relevant to this case, being EXH 3A (being the original of the document but overwritten, and also lists Hotel Vunduba and Mash Park (EXH 47A). One of the glaring issues he pointed out was that there were huge disparities in terms of the



names or person reimbursing the transport was Thomas Omuga (Accused 3). In his testimony. PW3 Wycliffe facilitated the workshops at Kisumu Polytechnic as instructed by his senior Concelia Ondiek (A1) whereupon he mentioned the list of teachers who attended the workshop. only to receive instructions from A1 to surrender the list to her. Upon being shown EXH 3A, he claimed that there were some alterations done on it as the same veined with list he surrendered to A1. the lists, the number of participants and the amounts paid out. He stated; "MFI 3A is the original of the document but with certain parts overwritten. William Meso Mola's name was appearing in MFI 3A, MFI 47 A but was not in MFI 10 (a) — (g) which was the one used for surrendering MFI 3A and 47 A did not find their way into the lists MFI 10 (a) – (n) and MFI 26 (a, b, c, g). In term of numbers of persons attending the workshops, the numbers exceed those in MFI 26 (a, b, c, g) have more names than MFI 3A and MF x 47A. Those who attended training at Mash Park were 72, Vunduba & Maryland are 69 in number. The numbers in the lists MFI 10 (a) — (n) and MFI 26 (a, b, c, g) in total add to over 462 participants in Savanna, Maryland 103, Mash Park 85...."

### The Defence Case

33. When the 1<sup>st</sup> accused was placed on her defence in respect to the charges facing her counts, (counts 1, 2 and 6) She elected to make an unsworn statement. She stated that she was the Acting Director Secondary and Tertiary Education during the period in question; that she represented the Secondary Directorate in all the matters; that once the work plans and budget for the Double shift sensitization workshop programmed were and the Chief Accountant approved the 2<sup>nd</sup> accused was identified as an imprest holders. She stated that she herself was not a facilitator for the Double Shift workshop having conducted a training for capacity Building. He also stated that she was not involved in procurement of accommodation for the Double Shift; that she knew the 2<sup>nd</sup> accused because she was one of her officers; that the 3<sup>rd</sup> accused worked under a different Director; that she did not know the 4<sup>th</sup> Respondent and only got to know him in court but she knew the 5<sup>th</sup> accused by virtue of his position as Principal Kisumu Polytechnic. She denied there was a conspiracy as she only came to know her Co-Respondents some in court and others only in their official capacities. In regard to the charge of fraudulent acquisition of public property she denied any involvement in the same. Similarly, on Count 6 she denied she was involved in the surrender of the imprest and contended that that was the duty of the imprest holder.
34. The 2<sup>nd</sup> accused gave sworn evidence. She stated that she was a Senior Education Officer. She denied the charge of Conspiracy and stated that she could not have conspired with people she had never met. She however admitted taking the imprest of Kshs. 3,334,600 money which she was told by the 1<sup>st</sup> accused was the Double Shift Sensitization workshops for the whole country. The money was therefore divided into three with Nyeri getting Kshs.526,400/-, Mombasa Kshs.397,400/- and Nairobi Kshs.2,410,800/- She testified that she retained only the portion for Nyeri and Mombasa a total of Kshs. 923,800/- while the 1<sup>st</sup> accused retained the Kshs. 2,410,800 for Kisumu. It was also her evidence that she conducted the trainings in Nyeri and Mombasa; that participants were duly paid as per the schedules. She vehemently denied taking part in the workshops in Kisumu. She contended that the documents she surrendered were genuine an authentic and denied that she falsely accounted for the sums entrusted to her.
35. The 3<sup>rd</sup> Respondent also testified on oath. He stated that at the material time he was working at the Ministry of Basic Education as a Senior Quality Assurance Standard Officer. He vehemently denied that he conspired with his co-respondents and explained that although he participated in the Double shift workshop at Kisumu it was as a participant but not a trainer. He conceded that he coordinated the Quality Assurance and Standards workshop and as the one for Guidance and Counselling both of which happened simultaneously with the Double shift that was conducted in Kisumu; that it was him who carried the imprest for the two workshops; he disputed that he participated in reimbursing



transport money in regard to the Double Shift; that some teachers who attended the Double Shift also attended the two workshops which were under him; that he did not concern himself with the Double Shift although he would attend some of the sessions and interact with the officers as that workshop was in the same venue as the workshops we was coordinating; that he paid for some lunches for some of the Double Shift workshop teachers. He however disputed that he reimbursed Antony Maangi (PW4) and timothy Mwangi (PW10) for the Double Shift and time and time again vehemently denied that he was in the centre of the Double Shift workshop. He contended that there might have been a mix up of the work tickers used to surrender the Double Shift imprest.

36. The 4<sup>th</sup> accused testified that at the material time he was a Finance Officer at the Kisumu Polytechnic. His responsibility was to oversee the activities of the accounts office and that included the docket of revenue and expenditure, overseeing preparation of book of accounts, budgeting and answering audit queries. He stated that the Polytechnic indeed hosted the Double Shift sensitization workshops and that it provided the participants with accommodation. He stated that he prepared a quotation for 650 participants for 3 days to the tune of Kshs. 6,825,000 which he duly transmitted to the Ministry of Education whereupon a 75% down payment amounting to Kshs.5,118,750 was sent to the Polytechnic. He testified that however since the polytechnic was in session accommodation for the participants was outsourced at different establishments. It was then left to the Ministry to distribute the participants to the various hotels. He explained that whereas the Ministry had paid the Polytechnic Kshs.3,500/= per participant per day the hotels were charged Kshs. 2,500/- per participant hence the Polytechnic would have benefitted by a sum of Kshs. 2,939,100/=. He explained that the government policy then was for government workshops to be hosted in government institutions so that they could generate money. He contended that the workshops took place and all the participants were accommodated; that none claimed not to have been accommodated and the Ministry signed LSOs (Local Service Orders) which signified it was satisfied with the services rendered. The 4<sup>th</sup> Respondent denied having conspired with his co-respondents or benefitting from the funds. He contended that he was not involved in the cancellation of the payment vouchers which landed him in court; that they only came to his notice during the trial. He stated that had they come to his notice earlier he would have asked the officers who did them to confirm. He conceded that the polytechnic did not cater for all the 650 participants but only 470. He however contended that the Ministry of Education did not pay more than was deserved by the Polytechnic.
37. The 5<sup>th</sup> Respondent elected to make an unsworn statement. He was the Principal of the Kisumu Polytechnic at the material time. He disputed that he conspired to defraud the Ministry of Education stating that he did not know his co-accused persons save for the 4<sup>th</sup> Accused/Respondent. He stated that the sum of Kshs.5,118,750/- was sent to the Polytechnic on May 19, 2005 while he was in Beijing China; that it was upon his arrival that he learnt that some hotels had been outsourced by the Polytechnic to offer services; that he had nothing to do with the stamps allegedly affixed by the Polytechnic to the impugned documents and that no audit was carried out. He expressed shock that he was charged and emphasized that he had not interacted with the other accused persons/Respondents until they were charged.
38. After evaluating the evidence, the learned magistrate acquitted all the Respondents on the charge of Conspiracy (count 1); acquitted the 1<sup>st</sup> Respondent on the charge of Fraudulent acquisition of public property on Count 2; acquitted the 2<sup>nd</sup> Respondent on the charge of Fraudulent acquisition of public property, count 3; convicted the 2<sup>nd</sup> Respondent on the charge of Fraudulent acquisition of public property, count 4, and sentenced her to a fine of Kshs.300,000/- or one year in prison and a mandatory fine of Kshs.108,000/= or one year imprisonment; acquitted the 2<sup>nd</sup> Respondent on the charge of Fraudulent acquisition of public property Count 5; acquitted 1<sup>st</sup> and 3<sup>rd</sup> Respondents on the charge



of False accounting by a public officer, count 6 but convicted the 2<sup>nd</sup> Respondent on the alternative charge and sentenced her to a fine of Kshs. 1,000,000 or two years' imprisonment and lastly acquitted the 4<sup>th</sup> Respondent on the charge of dealing with suspect property contrary to section 47(1) of the *Anti-Corruption and Economic Crimes Act* (Count 7).

39. Being aggrieved the DPP preferred this appeal on the following grounds:-

- “ 1. That the learned trial magistrate erred in law and in fact in acquitting the respondents by wholly relying on the evidence by the defense and entirely disregarding the evidence adduced by the prosecution.
2. That the learned trial magistrate erred in law and in fact in acquitting the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents under section 215 of the *Criminal Procedure Code* in all the counts while the prosecution had proved its case beyond any reasonable doubt.
3. That the learned trial magistrate erred in law and in fact in acquitting all the respondents in Count I in holding that it is impossible to conspire with people you have never met.
4. That the learned trial magistrate erred in law and in fact in acquitting the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents on Count I against the overwhelming evidence including the document examiner's report, that was not challenged in the respondents' own testimony that the fraudulent documents used bore signatures of all the respondents.
5. That the learned trial magistrate erred in law and in fact by holding that the Applicant was not able to prove connection of 4<sup>th</sup> and 5<sup>th</sup> Respondents to the imprest yet documents used to surrender the said imprest bore their signatures subject of Count I.
6. That the learned trial magistrate erred in law and in fact in acquitting the 2<sup>nd</sup> respondent in Count III against clear evidence showing that she fraudulently acquired Kshs 262, 000/- whilst stating that the calculations reached at by the Prosecution did not flow from the evidence.
7. That the learned trial magistrate erred in law and in fact in acquitting the 2<sup>nd</sup> Respondent in Count 5 on the basis that the Applicant only called two witnesses who in fact proved that that the participants were paid Kshs. 500/= as transport reimbursement and not Kshs.2,500/= which fact was also confirmed by the Document Examiners in his evidence.
8. That the learned trial magistrate erred in law and in fact by holding that the Applicant had to be precise with numbers thus acquitting 2<sup>nd</sup> Respondent of Count V and at the same time stating that the prosecution through their witnesses proved that the participants were not paid Kshs 2,500 indicated in the attendance lists.
9. That the learned magistrate erred in law by failing to consider the weight of the evidence against the respondents.”



## Analysis and Determination

40. The appeal was canvassed by way of written submissions which learned Counsel for the parties highlighted orally on June 26, 2023.
41. I have as a first appellate court reconsidered and evaluated the evidence before the trial court so as to arrive at my own independent conclusion while keeping in mind that I did not see or hear the witnesses who testified – (See *Okeno v Republic* [1972] EA 32). I have also considered the rival submissions of learned Counsel for the parties.
42. Cumulatively the Respondents faced six charges some jointly and other separately. On count 1, it was alleged they had conspired to steal Kshs.5,337,500/- from the Ministry of Education by purporting that the said money had been spent on the Double shift programme for Secondary School in the Nyanza Region. They were all acquitted on that charge upon the Learned Magistrate between the accused person was not proved.
43. The DPP/Appellant faults the trial magistrate for acquitting the Respondents in the face of overwhelming evidence, including an unchallenged report by the document examiner that all the fraudulent documents bore signatures of all the Respondents. On their part all the Respondents contend that it was not possible for them to conspire given that they were not known to each other.
44. Conspiracy is the meeting of the minds of two or more persons to commit a crime. The [\*Blacks Law Dictionary\*](#) Defines Conspiracy as:-  
  
“A combination of confederacy between two or more persons formed for the common purpose of committing, by their joint efforts, some unlawfully or criminal act or some act which is innocent in itself but becomes unlawful when done by the concerted action of the conspirators, or for the purpose of using criminal or unlawful means to the commission of an act not in itself unlawful.”
45. The [\*Achibold’s Criminal Pleadings, Evidence and Practice 2010\*](#) (Sweet and Maxwell) states as follows at pages 3025 – 3026;-  
  
“The offence of conspiracy cannot exist without the agreement, consent or combination of two or more persons..... so long as the design rests in intention only, it is not indictable, there must be an agreement... Proving of the existence of a conspiracy is generally a matter of inference deduced from certain criminal acts of the parties accused, done in pursuance of an apparent criminal purpose in common between them.”
46. It is clear from the above two definitions that to prove conspiracy an agreement, between two or more persons, to commit a criminal or unlawful act must be demonstrated. It is also evidence that such proof can be deduced from circumstantial evidence. In the case of [\*Christopher Wafula Makokha v Republic\*](#) [2014] eKLR the court observed and I agree: -  
  
“The offence of conspiracy cannot exist without the agreement, consent or combination of two or more persons ..... so long as a design rests in intention only, it is not indictable, there must be agreement ..... proof of the existence of a conspiracy is generally a matter of inference, deduced from certain criminal acts of the parties accused, done in pursuance of an apparent criminal purposes in common between them.”



47. The argument by the Appellant that the Respondents need not have been known to each other finds merit in the *Halsbury's Laws of England* Vol. 25 Criminal Law at Paragraph 73 which states: -
- “..... it is not however, necessary that each conspirator should have been in communication with every other.”
48. However, the same paragraph as in the definitions cited earlier makes it clear that it is not enough to prove that the persons charged pursued the same unlawful object; proof that there was an agreement between them is essential.
49. The evidence adduced in this case was to the effect that the Respondents played completely different roles in the Double shift programme and whereas the evidence shows that a fraud was committed that was done pursuant to separate intentions. Each may have committed the offence but there was no evidence at all that there was a meeting of minds. It is my finding therefore that the learned magistrate applied the correct principles in acquitting the Respondents on the charge of conspiracy. The acquittal is affirmed.
50. Count 2 related to the 1<sup>st</sup> accused separately and it was alleged that she fraudulently acquired a sum of Kshs.8,055,000/= by purporting that the said sum was due to Savanna Grassland for accommodating participants of the Double Shift programme, which was false. The 1<sup>st</sup> Respondent was acquitted on the charge the trial magistrate having found that the charge was not proved beyond reasonable doubt. I have perused at the petition of Appeal and it makes no specific mention of this count and the 1<sup>st</sup> Respondent. Learned Counsel for the appellant submitted on all the grounds globally and stated that there was evidence that although payments were made to Savannah Grassland Hotel no participants were accommodated there.
51. On this Count the prosecution's case was that what happened in the case of Grasslands Savanna was that invoices which documents relating to other activities had taken place there, such as secondary schools Guidance and Counselling workshops and the District project Implementation on Institutional Procurement and Financial Management had been changed/doctored or forged to indicate that the monies paid were for the Double Shift. Several vouchers and invoices were exhibited and produced as evidence that indeed the cancellation was done. However, a warrant to investigate the Savanna Grassland bank accounts and the statement of account was ordered inadmissible because they had not been supplied to the defence. The investigating officer (PW47) gave evidence that the monies were paid to Savanna directly from Kisumu Polytechnic. On her part the 1<sup>st</sup> accused stated that she did not play any role in the Double Shift whether as a facilitator or a trainer; that she was not involved in procurement of accommodation for the workshop and that she was not connected to the transactions in regard to this charge.
52. Having evaluated the evidence in regard to Count 2 it is my finding that there was no evidence to link the 1<sup>st</sup> accused to the payments made to Grassland Savanna either as the person who made the fraudulent payments or as the receiver of the payments. In his testimony at page 447 of the typed proceedings as the investigating officer told the court that he visited the hotel and found it had a capacity of about 60 persons meaning it could not have accommodated the number of participants alleged to have attended the Double Shift workshop. It is instructive that whereas the investigating officer (PW47) stated that he established the ownership of Savanna he did not disclose who the proprietor was. It is also noteworthy that a witness (PW43) who could have shed light on the happenings at Savanna was stood down but was not recalled to conclude his testimony. All the above including the investigating officer's (PW47) testimony that the forged documents found in the 1<sup>st</sup> Respondent's office and which were tending to her guilt could have been interfered with and the fact that there was no evidence that



- the cancellations were by the 1<sup>st</sup> Respondent, left a lot of gaps in the prosecution's case as would entitle her to the benefit of doubt. Her acquittal on that count is accordingly upheld.
53. Counts 3 and 4 were in respect to the 2<sup>nd</sup> Respondent (Christine Chacha) separately. She was acquitted on count 3 and convicted on Count 4. In addition to those two counts she was also found guilty and convicted on Count 6. I have however noted that she appealed against the convictions in *Christine Chacha v Republic* HC ACEC Appeal No. E013 of 2022. The appeal was partially successful as by a judgment delivered on 22<sup>nd</sup> June 2023 by Gichohi J, the conviction on count 4 was quashed and set aside but the conviction on Count 6 was upheld. This court being a court of concurrent jurisdiction as the one that determined that appeal it cannot interfere with the decision of that court and the Appellant is left to appeal to the Court of Appeal. I shall therefore not make any determination in that respect.
54. As for the acquittal on Count 3, I agree with the trial magistrate that the evidence adduced fell short of the standard of proof required and that the 2<sup>nd</sup> Respondent was therefore entitled to the benefit of doubt.
55. Count 6 was a charge against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents jointly. The 1<sup>st</sup> and 3<sup>rd</sup> Respondents were acquitted but the 2<sup>nd</sup> Respondent was convicted. As regard the conviction of the 2<sup>nd</sup> Respondent the same was upheld by Gichohi J in *Christine Chacha v Republic* HC ACEC Appeal No. E013 of 2022 (unreported) and this court cannot sit on appeal over that finding. The particulars of this charge were that being Senior Education Officers in the Ministry of Education in-charge of Kshs.3,334,600 intended for sensitization workshops for secondary schools on doubt shift program, knowingly furnished a false schedule to the said Ministry purporting it to be a just and true account of the expenditure of the said funds. The count had an alternative charge of giving a false document by agent contrary to section 41(2) as read with section 48 of the *Anti-Corruption and Economic Crimes Act* against the 2<sup>nd</sup> Respondent which stated that she knowingly gave false surrender to the detriment of the said Ministry, purporting it to be a just and true account of the imprest allocated to her for that purpose. The prosecution/Appellant adduced evidence of list of participants, invoices and vouchers which were cancelled, doctored and overwritten. Witnesses were called who testified that they were paid less than what was indicated in the schedules that were used to surrender the imprest. There was also evidence beyond reasonable doubt that people were included in the attendance schedules who had not in fact attended the workshops. It is my finding therefore that it was proved beyond reasonable doubt that the schedules used to surrender the imprest of Kshs.3,334,600 was false. However it is my finding that the responsibility for surrendering the imprest fell solely upon the 2<sup>nd</sup> respondent who was the imprest holder and indeed it was she who submitted the false schedules. The trial magistrate did not therefore err in acquitting the 1<sup>st</sup> and 4<sup>th</sup> Respondents and that finding is upheld.
56. In the upshot I find no merit in this appeal and the same is dismissed. The judgment of the trial court is upheld save as it may have been affected by the judgment of Gichohi J in *Christine Chacha v Republic* - HC ACEC Appeal No. E013 of 2022.

**SIGNED, DATED AND DELIVERED VIRTUALLY THIS 28<sup>TH</sup> DAY OF SEPTEMBER 2023.**

**E N MAINA**

**JUDGE**

