



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA, AT NAIROBI
ANTI-CORRUPTION & ECONOMICS CRIME DIVISION

CRIMINAL APPEAL NO. 5 OF 2016

ELIZABETH KALOKIAPPELLANT

VERSUS

REPUBLICRESPONDENT

(An Appeal against the Judgment of (Hon. F. Kombo) Principal Magistrate in Nairobi Anti-Corruption Case No. 32 of 2011 delivered on 31st August 2016)

JUDGMENT

1. Elizabeth Kaloki the Appellant herein was charged before the Chief Magistrate's Anti-Corruption Court, Nairobi under the Anti-Corruption and Economic Crimes Act and Penal Code, namely;

Count 1: *Fraudulent acquisition of public property contrary to section 45(1) (a) as read with section 48(1) of the anti-corruption and economic crimes act, 2003. The particulars were that on or about 30th June 2009 at the ministry of education headquarters at Jogoo house, Nairobi, within Nairobi area in Nairobi province, within the republic of Kenya, fraudulently acquired property to wit a sum of Kshs. 1, 467,200/= by purporting that the same had been paid to participants of an HIV/AIDs prevention and life skills workshop held at Shanzu Teachers College.*

Count 2: *Fraudulent Acquisition of Public Property contrary to section 45(1) (a) as read with section 48(1) of the anti-corruption and Economic Crimes Act, 2003. The particulars were that on or about 30th June 2009 at the ministry of education headquarters at Jogoo house, Nairobi, within Nairobi area in Nairobi province, within the republic of Kenya, fraudulently acquired property to wit a sum of Kshs. 205,060/= by purporting that the same had been paid to participants of an HIV/AIDs prevention and life skills workshop held at Kamwenja Teachers College.*

Count 3: *Fraudulent acquisition of public property contrary to section 45(1) (a) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003. The particulars were that on or about 30th June 2009 at the Ministry of Education headquarters at Jogoo house, Nairobi, within Nairobi area in Nairobi province, within the republic of Kenya, fraudulently acquired property to wit a sum of Kshs. 303,114.00 /= by purporting that the same had been used to purchase stationary to facilitate the HIV/AIDs prevention and life skills workshop held at Shanzu Teachers Training College and Kamwenja Teachers College.*

Count 4: *Deceiving Principal contrary to section 41(2) as read with section 48 of the Anti-Corruption and Economic Crimes Act, 2003. The particulars were that on or about 30th June 2009*

at the Ministry of Education headquarters at Jogoo house, Nairobi being an employee of the Ministry of Education and tasked with conducting training workshops to representatives of primary schools on HIV and Aids prevention and life skills at Shanzu and Kamwenja Teachers Training colleges respectively, to the detriment of the said ministry knowingly gave a false imprest surrender return for a sum of Kshs. 4,492,000.00/= purporting it to be rue account of the imprest allocated to her for that purpose.

Count 5: False Accounting by a Public Officer contrary to section 331 (1) and (2) of the Penal Code. The particulars were that on or about 30th June 2009 at the Ministry of Education headquarters at Jogoo house, Nairobi being a senior educational officer at the ministry of education and tasked with conducting workshops to representatives of primary schools on HIV and AIDs prevention and life skills at Shanzu and Kamwenja Teachers Training colleges respectively, to the detriment of the said ministry knowing furnished a false schedule to the said ministry purporting it to be a just and true account of the expenditure of the said funds.

2. She was acquitted on counts 1, 2, and 3 under Section 215 of the Criminal Procedure Code after a full hearing and convicted on count 4 and 5 as follows;

Count 4: Fined Shs.300, 000/= in default, six months imprisonment.

Count 5: Fined Kshs. 205,000/= in default six months imprisonment.

3. Being aggrieved by both conviction and sentence therein, she filed this appeal citing the following grounds;

i. THAT the learned trial magistrate erred in law and in fact in finding that the prosecution had had made out a case against of deception against the Appellant whereas there was no evidence to support the finding.

ii. THAT the learned trial magistrate erred in law and on fact I failing to find that the prosecution case was not proved beyond reasonable doubt.

iii. THAT the learned trial magistrate erred in law and on fact in failing to find that the appellant's defense had rebutted the prosecution case.

iv. THAT the learned trial magistrate erred in law and in fact in failing to scrutinize and properly evaluate the evidence on record and indeed the Appellant's defense regarding counts VI and V of the Charge sheet and in so doing fell into error.

4. The Appellant pleaded not guilty to all the counts and the case proceeded to full hearing with the prosecution calling a total of forty (40) witnesses. The prosecution closed its case and the Appellant was put on her defense.

5. The brief facts of the case are that the Appellant was a senior education officer at the ministry of education headquarters. She was tasked with the responsibility of conducting workshops to representatives of primary schools on Hiv and Aids prevention and life skills at Shanzu and Kamwenja Teachers Training colleges respectively. She therefore drew an imprest **Kshs. 4,492.000/=** to facilitate the same.

6. Being a first appeal, this Court is required to evaluate the evidence placed before the trial court and arrive at its own conclusions regarding the same, bearing in mind that it never saw nor heard the witnesses testify and give allowance to that fact. (**Okeno –vs- Republic [1972] E.A 32**).

7. A summary of the Prosecution case is that **PW1 Kimathi M’Nkanatha** a former in-charge of the directorate of policy at the ministry of education was coordinating implementation of programmes under the said directorate. He stated that he initiated a memo to the accounting officer for approval of a budget

for training of 7,500 representatives from 2,500 primary schools on Hiv and Aids prevention and life skills at Kamwenja and Shanzu Teachers Training Colleges respectively. That the budget proposal of Kshs. 77,861.00 was approved by the then accounting officer Prof. Karega Mutahi. He denied monitoring how the finances were being used.

8. PW2, Onesmus Kiminza Mutinda is an employee of the ministry of education in charge of policy, partnership and East Africa affairs. He stated that he is also a senior deputy director of education and an alternate AIE holder for KESSP pool account which had 23 investment programmes one of which was Hiv and Aids prevention skills. He further stated that he approved an imprest of Kshs.4,942,000/= to the Appellant herein to conduct the above mentioned training. He also signed the surrender vouchers which were accompanied by a number of documents such as summary of expenditure, payment schedules relating to the activity copy of imprest warrant, proposal among others to signify that the activity had taken place.

9. PW3 Stanley Nzaro Kalama was an accounts clerk at Shanzu Teachers College. He confirmed that a workshop had been held at the college with participants being accommodated. At the conclusion of the workshop, they were given lists of participants, and amounts due for reimbursement by the coordinator (the Appellant). The money for reimbursement was given to the college bursar who then tasked PW3 and others to prepare envelopes from the list of participants. Thereafter, the Appellant made copies of the reimbursement lists and retained the originals. That they were only given payment schedules which they used to pay the participants. It was his evidence that the amounts in the schedules before the Court were inflated and he denied having used them to pay the participants. On workshop materials, he stated that the college purchased the stationery as per the workshop needs, and the same was reimbursed. He identified **MFI 9 (a)** as the list of materials supplied for the workshop. He identified a fake LPO of Kshs.233,115/= that he had raised and admitted having conspired with the Appellant to inflate the same as he had only received a sum of Kshs.84,640/=. As a result of this, he was sacked by the college.

On further cross examination, he was clear that there was a disparity between the number of participants who attended the workshop and the number for which the Ministry was invoiced. He confirmed that facilitators were paid Shs.224,000/= and Shs.128,000/= for 1st and 2nd weeks respectively but the list for the 3rd week went missing. He confirmed that the course coordinator was the Appellant and a **Mr. Dominic Muturi**. On purchase of stationary, he stated that this was handled by various suppliers who invoiced the Ministry. It was his evidence that the training had been transferred to Paradise Hotel Kikambala and all that he did was to pay the participants on the final days.

10. PW4 Beatrice Wambui Kiarie is a stores clerk at Kamwenja Teacher's Training College. She testified that she bought nametags, mineral water, methylated spirit, masking tapes etc for the workshop. She recorded the items she had bought on the ledger though there was a discrepancy on the value of the list of items she purchased and on the list of the items spent.

11. PW5 Rosemary Wagiti Karanja works at Kamwenja Teacher's Training College as an accounts clerk. She confirmed that the workshop took place, with 78 participants and 135 participants in the 1st and 2nd groups respectively. It was clear that the ministry of education paid for the participant's upkeep. She said, the participants were paid their transport reimbursement by the ministry of education via the Appellant. She identified **MFI 28-48** as the payment schedules used to pay the participants transport reimbursements and they were given the schedules by Lily Kireru who was the course coordinator. She did not know who prepared the schedules. She only prepared a list of items (stationery) which the participants were to use and that the total cost for stationary was Kshs.69,999/= and the same was bought by the college. She stated that she gave the receipt for purchase of stationary to the Appellant for accounting purposes and a total of Kshs.116,940/= was reimbursed.

12. PW6 Lily Kelelyo is a quality Assurance and Standards Officer. She testified that there was a workshop conducted by the ministry of education at Kamwenja Teacher's Training College in June 2009, where she was a course facilitator and also received the participants. She was assisted by the other course facilitators who were 7 in number. She confirmed that the participants were reimbursed their transport costs. The course was coordinated by the Appellant who paid the facilitator's fees of Kshs.2,000/= per

day. She was paid her facilitator's fees and transport reimbursement of Kshs.1,000 and confirmed that the amount was the same for all the facilitators who travelled from Nairobi. She however said that there was one facilitator who was paid Kshs.4,900 for transport yet she came from Nairobi. PW6 identified *Exhibit 64* as a payment schedule but it was not the one she had used to pay the participants transport reimbursement. She singled out one **Alphonse Senga** whom she had paid Kshs.1,300/= yet the schedule indicated that he had been paid Kshs.3,000/=. She said she packed up the payment schedules and sent them to the Appellant.

13. PW7 Benson Mwamburi Mbwagwa a lecturer at Shanzu Teacher's Training College testified that he attended a workshop held at the college in June 2009. He said the Appellant was in charge of the workshop and that there were other participants from various parts of the country. He was paid facilitation fees of Kshs.2,000/= per day for three weeks which amounted to Kshs.42,000/- and also received transport reimbursement of Kshs.800/-. He did not know why the Appellant had been charged.

14. PW8 Valery Okoit is an employee of the teacher's service commission. She recalled facilitating a workshop on Hiv and Aids prevention skills organized by the ministry of education at Kamwenja Teacher's Training College. She testified that the Appellant was the overall coordinator of the workshop. She was paid Kshs.28,000/= for facilitation and Kshs.1,000/- only for transport reimbursement. She stated that the schedule in Court indicated that she had been paid transport reimbursement of Kshs.4,900/- which she disputed. She said she was in charge of the clerks at the training and that she assisted in disbursing the money to the participants which amount was already pre-determined. She explained that the figures on the schedule she had signed had been tampered with so that figure **1** was changed to **4** and one zero changed to **9** making the figure Kshs.4,900/=. She stated that she delivered the sealed documents comprising of the payment schedules to Jogoo House though she did not know what was in the envelope. She didn't know who tampered with the envelopes and Appellant was not present when the payments were being made.

15. PW9 Mary Jane Ambiyu Mbuya is a teacher at Komarock Primary School. She testified that she attended a workshop at Shanzu Teacher's Training College in June 2009 as a participant. The venue had been changed from Shanzu Teacher's Training College to Kikambala as students were in session. She confirmed that she was reimbursed her transport cost of Kshs.2,500/- and not Kshs.3,500/= as reflected in *Exhibit 16*.

PW10 Anthony Macharia Kariuki a teacher at James Gichuru Primary School confirmed attending the training at Shanzu Teachers Training College and being paid a transport reimbursement of Kshs.2,500/- and not Kshs.3,500/- as appearing on the payment schedule.

16. PW11 Alice Wanjiru Gichu works at the ministry of agriculture but was previously working at the ministry of education as the chief finance officer. She testified that she was the principal advisor to the permanent secretary on finance matters and in charge of the staff. She stated that whenever an activity arose, the director in charge of that department would prepare a budget and forward the same to her for confirmation of availability of funds. She would then forward the same to the Permanent secretary for approval. She confirmed knowing the KESSUP programme and that the Appellant had been issued with a temporary imprest of over 4 million which was to be used for a workshop to be held at Shanzu Teacher's Training College. She confirmed knowing the Appellant and stated that wherever an officer misappropriated imprest, such an officer would be surcharged by attaching his/ her salary.

17. PW12, Margaret Adhiambo Nduri testified that she attended a workshop which was to be held at Shanzu Teacher's Training College but was redirected to Kikambala. She confirmed receiving Kshs.2,500/ and not Kshs.3,500/- as in *Exhibit 30*. **PW13 Wachira Kagunya, PW14 Anne Mbula Mutua, PW15 Peter Githinji Kagwe, PW16 Samuel Muriithi Mwaniki, PW17 Jackson Miano Wanjau, PW18 Charles Waithaka, PW19 James Maina Mwangi, PW120 Marieta Nduku Kieti, PW21 Karume Stephne Muriuki, PW22 Felix Maina Murigu, PW13 Jane Njeri Mwaura, PW24 Peter Karanja Kariuki, PW25 Margaret Atieno Onyando, PW26 Jane Wangui Waweru, PW27 Elizabeth Mary Mwoga, PW28 Aloisia Kiringa Njue, PW30 Jane Kerubu Nyangau, PW31 Jane Wangei Gakuya, PW32 Catherine Njoki Kanyi, PW33 Daniel Sila Muitie, PW34 Anne Mwanzia Kiathie, PW37 Lucy**

Jarabi Obonyo, PW38 Allan Mutua Musyoki have all denied receiving transport reimbursements of the amounts shown in the payment schedules before the Court. All the schedules before the Court had inflated figures as confirmed by these witnesses.

18. PW29 Samuel Poisa Mjomba a teacher at Taveta Advisory center recalled attending a training at Shanzu Teacher's Training College between 31/5/2009 to 20/06/2009 as a facilitator. He facilitated the training for 3 weeks and was paid Kshs. 2,000/- per day (total 42,000) being facilitation fees. He was also reimbursed his transport cost of Kshs. 1,800. He said that the workshop coordinator was the Appellant and that she paid them frequent visits during the 3 weeks.

19. PW 35 George Oyaro Haya an employee of the ministry of devolution who previously worked at the ministry of education explained the process of obtaining imprest by an employee for an activity and also the process of surrendering the same. He stated that in the course of his duties, he came across **Exhibit 2** herein which was a payment voucher for payment of imprest of **Kshs.4,942,000/-** to the Appellant. He personally worked on the imprest request which was approved by his Senior Accountant. He indicated that the imprest comprised of **Kshs.85,725/-** being fuel expenditure, **Kshs.686,000/-** being facilitation allowance, **Kshs.310,075/-** being per diem allowance and **Kshs.3,541,700/-** being transport expenditure. He said that the surrender documents in relation to the Appellant's expenditure were signed by officers under him and there were no internal queries raised within the ministry but an audit query was raised by external auditors. He explained that after surrender, the documents are kept by the accountant pending future audit processes.

20. PW 36 John Mureithi Mbogo works at the ministry of education as an accounts assistant who mainly examines vouchers. On being referred to voucher No. 009698- **Exhibit 71**, he said that it was in respect of payment to Kamwemja Teacher's Training College for a training on Hiv and Aids prevention and life skills and that the same was made vide cheque no. 000406 for Kshs. 1, 174,800. He identified several other vouchers made in respect of the imprest issued to the Appellant herein. He confirmed the total expenditure on the vouchers based on the supporting documents and from the said documents found that there was no over-payment. He produced the vouchers as exhibits. He further stated that the documents he produced were submitted to him by the Appellant and that after she submitted them, they were kept under lock and key. He said that the accounts tallied with what was submitted by the Appellant.

21. PW 39 No. 230925 Chief Inspector Jacob Odour a forensic document examiner testified that he received exhibits from a Mr. Mokaya from EACC marked as follows;

- A1-A129 questioned documents or the documents in dispute.
- B1-B4 specimen handwriting and signatures for the Appellant.
- C1- Known specimen handwriting and signatures for Appellant.
- D1-D47 specimen handwritings for the participants.

He testified that the specimens were accompanied by a memo with 14 requests. He examined and compared the signatures on the exhibit documents starting with the Appellant's specimen handwriting and signature with her known specimen handwriting and concluded that there were similarities between the signatures and he concluded that they were made by the same author. He thereafter compared the disputed signatures from the participants and concluded that they were made by a different author.

22. He finally subjected the signatures to a magnifying procedure with the aim of identifying peculiar individual characteristics e.g. how letters and signatures have been defined, how characters or letters within the signature have been spaced, initial and terminal strokes of the signatures, baseline alignment, natural pen lifts and gaps, pen pressure and speed, writing quality and general resemblance, natural variations, change in writing habit or disguise before arriving at his opinion. He produced the exhibit memo together with his findings as exhibits in court. On cross examination, he stated that the participant's signatures from the attendance lists did not tally with the signatures on the reimbursement schedules.

23. PW 40 Gideon Mokaya a financial forensic investigator with EACC testified that his duties are

investigations into allegations of fraud and corruption. He stated that he was instructed to investigate the Appellant herein on allegations of fraud and misappropriation of funds at the ministry of education. He commenced investigations by obtaining documents from Kamwenja and Shanzu Teacher's Training Colleges as well as the ministry of education headquarters. The documents received from Shanzu and Kamwenja were photocopies as the originals were said to be with the Appellant at the ministry of education headquarters. He got the surrender documents at the ministry of education headquarters but the original documents i.e. payment schedules were missing. He also stated that in the course of investigations, he realized that the amount spent on transport was inflated and that what was paid to the participants was less than what was indicated in the surrender documents.

24. After doing his calculations he discovered that the amount inflated on participants transport reimbursement amounted to Kshs. 1,467,200/- and recommended that the Appellant be charged with fraudulent acquisition of Kshs. 1, 467,200/- and that in the same breath, she be charged with deceiving principal contrary to section 41 (2) as read with section 48 of the Anti-Corruption and Economic Crimes Act, 2003. He produced all the documents referred to by PW39 as exhibits in the case.

25. In cross examination, the witness stated that he obtained all the exhibits in this case from the mentioned institutions and his investigations revealed that the originals of the documents he got from Kamwenja and Shanzu Teachers Training College never reached the ministry of education headquarters yet they had been given to the Appellant. He stated that the imprest amount was paid to the Appellant in cash though she never directly paid transport reimbursement. He was also aware that PW3 was sacked for misappropriation of funds. He recommended that the Appellant be charged over the money alleged to have been misappropriated by PW3. He found that the genuine transport reimbursement forms were with the respective bursars of Shanzu and Kamwenja and that the ones presented by the Appellant for surrender were fictitious. He therefore recommended for her to be charged as the overall usage of the imprest fell on her.

26. **DW1** the Appellant elected to make an unsworn statement of defence and denied all the charges. She called no witness. She stated that she applied for an imprest of Kshs.4,942,000/= and that the money was to be used for workshops in training teachers on Hiv/Aids prevention and life skills. She stated that, she had requested that an accountant handles that money but the request was turned down since it was heading to the end of the financial year. She then deposited the money with the training institutions and left the money with the bursars of Kamwenja and Shanzu teacher's training Colleges respectively.

27. According to her, the course organizers dealt with the payment schedules and that she was not involved in any way in preparation and payment of transport reimbursements as she was operating between Shanzu and Kamwenja Teacher's Training Colleges which were over 800kms apart. She told the Court that the originals of the payment documents were given to Valerie Okoit who placed them on her desk. She insinuated that someone might have tampered with the documents since the office is open plan. She testified that the document examiner did not find that she had authored any of the documents presented in evidence and that although the investigator had stated that money had been lost inform of transport reimbursements, he did not produce the attendance sheets and transport reimbursement schedules for the third week hence could not prove the said allegations.

28. She denied ever seeing the originals of the payment schedules from Kamwenja and Shanzu and said that all accounting documents are kept in the custody of the chief accountant under lock and key. It was her evidence that in cases of misappropriation of imprest, the imprest holder is normally surcharged by attachment of her/his salary. She reiterated that the then minister of education had issued a statement saying that no funds were lost in the ministry. She told the Court that no issues had been raised regarding the money she personally handled and that the issues raised were in regard to the money deposited in the colleges. She pointed out that the Principals of the two training colleges were not called as witnesses and that her surrender of the imprest went through without any complaints. She urged the court to discharge her as she had suffered emotionally and financially.

29. During the hearing of the Appeal, **Mr. Mogikoyo** for the Appellant combined the four grounds of appeal. He submitted that serious errors were made in convicting the Appellant on the 4th and 5th counts.

He referred the court to page 180 of the Record of Appeal on the findings of the court. (I have perused the said page but there is no finding recorded thereon by the trial court). He stated that the Appellant did not prepare the payment schedules neither did she make the actual payments. Counsel submitted that the trial Court relied on the summaries accompanying the surrender vouchers and that the summaries were derived from existing material. He wondered how the Appellant could have deceived the Principal if there was no fraud.

30. Counsel impugned the trial court's finding that the Appellant was responsible for the imprest and stated that the Appellant could not be responsible as she had trusted the officers making the payments and had no reason to investigate their authenticity. He said that PW3's testimony could not be relied on as he changed his statement in court especially on the amount of money received from the Appellant. He submitted that there was no evidence to show that the Appellant was involved in the scam as alleged in counts 4 and 5. He further stated that no documents were found on the Appellant hence no manipulation can be found between the Appellant and PW3 and he prayed that the appeal be allowed.

31. Ms. Nyauncho appearing for the state opposed the appeal. She submitted that the prosecution was able to prove that the Appellant took an imprest of Kshs.4, 942,000/- for the two workshops and made surrender of the same. She said that evidence showed the transport reimbursement amount and that PW40 confirmed serious anomalies on the transport expenditure. She said that twenty six teachers testified and denied receiving the money shown on the schedules. That contrary to Counsel's submissions, the document examiner had testified that the Appellant prepared the lists and that he confirmed the signature thereon to be that of the Appellant. She submitted that there were fake documents prepared by the Appellant which she surrendered. It was her submission that the prosecution proved the charges adding that the most important ingredient was knowledge which had been proved.

32. Referring to **Exhibit 2**, Ms. Nyauncho submitted that it was in the Appellant's name and that the Appellant did not deny making the surrender of the expenditure and that as the coordinator, she knew everything. Ms. Nyauncho concluded by saying that PW3 (The Account's Clerk at Shanzu Teacher's Training College) proved that the Appellant had used fake documents to surrender. She took issue with the sentence which she said was lenient. She asked the Court to dismiss the appeal.

33. In reply, Mr. Mogikoyo for the Appellant submitted that the evidence of PW 5 - 9 showed that the Appellant neither prepared the documents nor made payments. He argued that deception must be proved and that none of the people who made the documents was called to testify. He further submitted that the Investigating Officer never said that the Appellant was responsible and that there was no evidence that fake documents were used in the surrender.

34. I have considered the evidence on record, the grounds of appeal, plus the submissions for and against the Appeal. Section 41(2) of the Anti-Corruption and Economic Crimes Act provides as follows on deceiving principal;

"An agent who, to the detriment of his principal, uses, or gives to his principal, a document that he knows contains anything that is false or misleading in any material respect is guilty of an offence."

Section 38 (1) of the Anti- Corruption and Economic Crimes Act defines "**agent**" and "**principal**" as follows;

"agent" means a person who, in any capacity, and whether in the public or private sector, is employed by or acts for or on behalf of another person;

"principal" means a person, whether in the public or private sector, who employs an agent or for whom or on whose behalf an agent acts.

35. There is no dispute that the appellant was an employee of the ministry of education. She does not deny obtaining an imprest of Kshs.4,492,000/= from her employer which money was to be used to

conduct trainings for Hiv and Aids prevention and life skills at Shanzu and Kamwenje Training Colleges. She does not deny surrendering the said imprest at the end of the activity. The issue then is whether during the surrender, the Appellant used fake documents to justify and /or prove that the imprest she obtained had been used for the intended purposes. PW35 explained the process of surrendering imprest and confirmed that it was the Appellant who submitted Exhibit 2 which was the surrender voucher and the documents attached thereto.

36. The surrendered documents comprised of receipts and payment schedules. Pw3, confirmed issuing a fake receipt for Kshs.233,150/- to the Appellant instead of Kshs.84,640/-. He confirmed that he had since been dismissed from Shanzu Teacher's Training College for that misconduct. Further, Lily Keleylo (PW6), a facilitator at Kamwenja TTC testified that she assisted the Appellant in paying transport reimbursement to the participants and other facilitators and stated that the payment schedules were prepared by the Appellant.

37. Several participants who attended the workshop as either facilitators or trainees among them PW 6, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 37, and 38 testified that the amount of money indicated in the transport reimbursement schedules as having been paid to them was not what they had received and signed for as the figures had been inflated. It is worth noting that these witnesses attended their training at either of the two training colleges therefore what happened at Shanzu regarding inflation of transport reimbursement was replicated at Kamwenja Teacher's Training College. The witnesses also disowned the signatures appearing against the payment schedules for transport reimbursement, which were used by the Appellant for surrender.

38. PW40, testified that in the course of his investigations, he found that the payment schedules used in support of the Appellants imprest surrender were different from the copies of the same that he had obtained from Kamwenja and Shanzu Teacher's training colleges. **PW3** confirmed that after making transport reimbursement payments, the Appellant made copies and left with the originals. PW39 finally confirmed that the signatures and amounts on the payment schedules given in support of the surrender and the signature and the amounts on the schedules obtained from the training venues were different. He also confirmed the participants' allegations that their signatures as appearing on the payment schedules attached to the surrender were different from what they had signed.

39. The above testimonies from both the participants and other witnesses are sufficient proof that the documents submitted in surrender to the Appellant's employer were not genuine. They were fake. Who then prepared these documents? PW3 testified that he issued a receipt to the Appellant for Kshs.233,640/- while he had indeed been given Kshs.84,150/-. He was dismissed from duty for this misconduct. PW12 confirmed that she assisted the Appellant in payment of transport reimbursements and said that she got the schedules from the Appellant. Further, after participants had been reimbursed their fares, the Appellant took the originals of the schedules and left the respective colleges with copies of the same.

40. The participants testified that the correct amount of money that they received was the one indicated on the schedules that were gotten from the colleges. It is the Appellant who made the surrender, she produced documents in support and justification of expenditure of the imprest she had taken. These were different from the original documents which had been given to her. Where are these original documents? I find that the prosecution proved that the Appellant deceived her principal by tendering documents that she knew contained false and misleading information.

41. The document examiner PW39 found the signatures on the schedules to be similar to that of the appellant. This buttresses the above finding.

42. On count 5, Section 331 (1) and (2) of the Penal Code provides as follows;

“False accounting by public officer,

1. Any person who, being an officer charged with the receipt, custody or management of any part of the public revenue or property, knowingly furnishes any false statement or

return of any money or property received by him or entrusted to his care, or of any balance of money or property in his possession or under his control, is guilty of a felony.

2. A person convicted of an offence under this section shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding ten years or to both”.

43. The prosecution successfully proved that the Appellant had deceived her principal by tendering false documents. The documents tendered were meant to account for the imprest obtained by the Appellant to conduct the two activities referred to herein. In an attempt to account for the money received, the Appellant tendered false accounting documents hence the prosecution successfully proved this count.

44. In the appeal, the Appellant challenged both the conviction and sentence, but she never submitted on sentence. M/s Nyaundo for the State submitted that the sentence was lenient, but could not call for its enhancement as no notice for enhancement had been filed and served.

45. Section 48 of the Anti-Corruption and Economic Crimes Act provides for sentencing for offences under Part V of the Act. It provides as follows;

48(1) A person convicted of an offence under this Part shall be liable to—

1. a fine not exceeding one million shillings, or to imprisonment for a term not exceeding ten years, or to both; and

2. an additional mandatory fine if, as a result of the conduct that constituted the offence, the person received a quantifiable benefit or any other person suffered a quantifiable loss.....”

(2) The mandatory fine referred to in subsection (1)(b) shall be determined as follows—

(a) the mandatory fine shall be equal to two times the amount of the benefit or loss described in subsection (1)(b);

(b) if the conduct that constituted the offence resulted in both a benefit and loss described in subsection (1)(b), the mandatory fine shall be equal to two times the sum of the amount of the benefit and the amount of the loss.

Section 331 (2) of the Penal Code provides;

“A person convicted of an offence under this section shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding ten years or to both.”

46. Upon Conviction, the trial Court sentenced the appellant to a fine of Kshs.300,000/= in default, six months imprisonment on Count 4 and a fine of Kshs. 250,000 in default six months imprisonment on Count 5.

47. Section 48 (1) (b) of the ACECA provides for a mandatory fine calculated in terms of Section 48 (2) (b) of the said Act. I note from the Learned Trial Magistrate’s observation on sentence, that he could not apply the provisions of Section 48 (1) (b) and 2 of the ACECA because there was no determinate loss.

48. I disagree with this observation. The reason being that the loss incurred when PW3 was asked by the appellant to inflate the receipt from Kshs.84,640/= to Kshs.233,115/= is Kshs.148,475/=. The inflated figures in respect of the transport of the various witnesses mentioned at paragraphs 14, 15 and 17 of this Judgment can easily be quantified and this Court could as well do it in order to apply Section 48 (1) (b) of ACECA. However, for the reason that the State did not raise it or address me on it, I leave it at that. Otherwise the sentences meted out against the Appellant are too lenient and I believe that’s why her

advocate did not address the Court on it. I will therefore not interfere with the sentence.

49. I find no merit in the appeal which I hereby dismiss. The conviction and sentence are confirmed.

Orders accordingly.

Date and delivered this 27th day of *July* 2017 at **NAIROBI**

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HEDWIG I. ONG'UDI

HIGH COURT JUDGE