



**Omar v Republic (Anti-Corruption and Economic Crimes Appeal E007 of 2021)
[2023] KEHC 20115 (KLR) (Anti-Corruption and Economic Crimes) (6 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20115 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
ANTI-CORRUPTION AND ECONOMIC CRIMES APPEAL E007 OF 2021**

EN MAINA, J

JULY 6, 2023

BETWEEN

DAUD ABDULAHHI OMAR APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the Judgment in Chief Magistrates Anti-Corruption
Case No. 47 of 2018 delivered by Hon. T W Murugi on 15th March 2021)*

JUDGMENT

1. The Appellant was together with three other persons not before this court, charged with three Counts of corruption offences in Milimani Chief Magistrates Anti-Corruption Case No. 47 of 2018. By a judgment delivered on 15th March 2021, the Appellant was acquitted on two Counts but convicted on the charge of Willful Failure to Comply With the laws relating to management of public property contrary to Section 45(2) (b) as read with Section 48 of the [Anti-Corruption and Economic Crimes Act](#). He was sentenced to a fine of Kshs. 800,000 in default, four years' imprisonment.
2. Being aggrieved, the Appellant, who was the 1st Accused in the trial court, preferred this appeal against the conviction and the sentence. The six grounds of appeal are:
 - “ 1) The learned trial Magistrate erred in fact and in law by convicting the appellant against the insufficient evidence to support the conviction.
 2. The learned trial magistrate erred in law by shifting the burden of proof to the appellant.



3. The learned trial magistrate erred in law and fact by convicting the appellant despite the finding that there was no loss of money by the County Government of Wajir.
4. The learned trial Magistrate erred in law and in fact by failing to consider the Appellants defence and dismissing it as a mere denial.
5. The learned trial Magistrate erred in law and fact by not considering the good faith defence tendered by the appellant
6. The learned trial Magistrate erred in sentencing the appellant to a fine of Kshs. 800,000 and in default 4 years imprisonment, which fine and sentence is harsh and excessive in the circumstances.”

The Charge

3. At the material time the Appellant was County Election Committee, the equivalent of a cabinet secretary, at the County Government of Wajir.
4. The charge for which the Respondent was convicted read:-

“Count III: Willful failure to comply with the laws relating to management of public property contrary to Section 45(2) (b) as read with Section 48 of the [Anti-Corruption and Economic Crimes Act](#)

Particulars of offence:

Daud Abdullahi Omar, between 5th and 9th October 2018, within Wajir County in the Republic of Kenya, being the County in the Republic of Kenya, being the County Executive Committee Member for Finance and Economic Planning at the Wajir County Government, being an officer whose functions concern the management of the public funds, willfully failed to comply with applicable law and procedures relating to the management of public funds to wit Regulation 85 (2) of the Public Finance Management (County Governments) Regulations, 2015 by designating one authorized signatory in respect of County Government of Wajir Imprest Account instead of the mandatory two signatories required.”

5. The prosecution called a total of 29 witnesses who can be placed in four groups: PW1 to PW 15, PW27 and PW 29 were employees of the County Government of Wajir; PW16, PW 20, PW21 and PW 28 Investigators with the Ethics & Anti-Corruption Commission; PW17, PW 18, PW19, PW 22 to PW 24 were employees of the KCB Bank Limited; and PW 25 and PW 26 were expert witnesses to wit a Forensic Document Examiner and a Data Analyst and investigator with Safaricom Limited respectively.
6. With respect to the charge of willful failure to comply with the laws relating to the management of public property, the prosecution witnesses testified as follows: AHMED GUHAD OMAR, (PWI) Chief Officer Medical Services Wajir County Government testified that he was the acting Chief Officer Finance and Audit from 28th June 2018 to 10th October 2018; that Wajir County Government had an Imprest Account at the KCB Bank, Wajir Branch which had two signatories, Jeff Mworja (Head of Treasury) and himself being the mandatory signatory; that during his tenure the two of them would sign cheques and the money would be withdrawn from the bank by the cashiers; that on 4th October 2018 he received a letter appointing Mohammed Salat as the Chief Officer Finance and was



- subsequently informed by the Manager KCB Wajir that he was no longer a signatory to the Imprest Account. He identified the cheques signed by Jeff Mworira which were used to withdraw the impugned Ksh. 26, 100,000.
7. MOHAMMED SALAT OSMAN, (PW2), the Chief Finance Officer Wajir County and successor to PW1, testified that he presented the letter authored by the Appellant which introduced him as a signatory to the Imprest Account and completed the account amendment form whereupon the bank manager confirmed through a letter that all cheques payable on the imprest account were to be signed by him (PW2) and were to be accompanied by the payment vouchers. He stated that the money once withdrawn would then be taken to the cash office where payments would be made to the imprest holders and then he would record the same in the imprest account register. He stated that the payment vouchers for the Kshs. 26,100,000 could not be found; that the County Imprest account was used to pay allowances, operational expenses, or items that were not procurable and that in the absence of the Chief Officer Finance, it was in order for the County Executive Committee Member Finance to give instructions as to who would become a signatory.
 8. Abdi Rahman Aden Adow (PW3), an accountant working with the Wajir County Government, whose role was writing cheques, collecting cheques and paying cash, testified that on 9th October 2018, Jeff Mworira, the Head of Treasury collected a cheque book No. 8 running from Nos. 007301 to 007400, cheque book No. 9 running from Nos. 007401 to 007400 to 00748 which had unused leaflets running from No. 007482 to No. 007500, from his office. PW3 stated that he made an entry of the books collected by Jeff Mworira in a diary and Mworira signed and dated the entry. PW2 stated that he then wrote a letter to the Chief Officer Finance (Ahmed Guhad (PW1) to inform him about the books collected from the cash office, whereupon the Chief Officer Finance wrote a letter dated 9th October 2018 to the Bank Manager to inform him of the unauthorized collection of cheque books from the cash office by the Head of Treasury Jeff Mworira. PW3 testified that the disputed cheques did not appear in the cheque register. He added that he opened a new cash register on the strength of the verbal instructions of the Chief Officer Finance (PW2) and that the Imprest Account had two signatories (the Chief officer Finance and the Head of Treasury). The Account also had three agents. He stated that the funds withdrawn from the account (Kshs.26,100,000) were not taken to the cash office.
 9. Eric Njue Ngagi (PW5), an Accounts clerk testified that he was the custodian of the payment vouchers which were taken to his office after payment. He stated that although he had received the payment vouchers for the 2017 / 2018 financial year, he was yet to receive the vouchers for the 2018/2019 financial year. That the same would be received at the end of the financial year and that payment vouchers already paid would be kept in the Archives while those that were yet to be paid would be kept in the Treasury.
 10. ABDI ABDULLLAHI HASSAN, (PW6), the Deputy Director Supply Chain Management, testified that he informed the Ethics and Anti-Corruption Commission officers; that his role was purely to give professional opinion on the procurement process and he did not know how payments were made.
 11. Osman Mohammed Kassim, (PW7), the Head of Human Resource produced the letters of appointment for the 1st to 3rd accused persons and in cross examination stated that the Wajir County Government usually employed casual employees and that the 2nd accused was the mouthpiece of the Wajir County Government.
 12. Hussein Sugow Gedi, (PW8) County Executive Committee Education, Gender, Sports, Culture and Social Services, testified that cabinet meetings would be held on a need basis and that communication of the same would be done by the County Secretary or through the WhatsApp forum; that the meetings



- required a quorum of five and would be chaired by the Governor while the County Secretary would take down the minutes. He stated that he could not remember any meeting being held in the month of October or that change of account signatories would be discussed in the meetings. He contended that his role was to attend meetings and not to take or keep minutes. In cross examination, he stated that he could not remember if a meeting was held on that day which was a Saturday and that he did not know if there was a resolution arising from that meeting. He further stated that the County Secretary who worked on the instructions of the Governor was the official liaison between the public and the County Government.
13. Pw9 Ahmed Sheriff Bule, (PW9) the CEC in charge of Public Service, Special Programmes Centralized Units and Town Administration, testified that he was not aware if a meeting was held on 6th October 2018 since he was in hospital on that day. In cross examination he stated that he did not participate in meetings when he was away. He also stated that the County Governments usually employed casual workers from time to time.
 14. NAIMA IBRAHIM SOMO, (PW10), the CEC in charge of Land, Physical Planning, Housing and Public Works in the Wajir County Government testified that the Wajir County Government had a total of ten CECs. She stated that the meetings whose quorum was five CECs were convened by the Governor through letters posted in their WhatsApp forum whose Administrator was the County Secretary. In cross examination, she stated that the decision to call for a meeting fell on the Governor. Further, that the County Secretary had never chaired any meeting and acted on the instructions of the Governor on any administrative issues and that cabinet meetings would be held on a need basis.
 15. Ismael Issak- (PW12) the CEC Trade & ICT stated that he did not attend a meeting that was held to discuss account signatories nor did the Executive Committee approve of Jeff Mworio to be the sole signatory of the County Imprest account. In cross examination, he stated that the governor would chair the meetings while the County Secretary would take down the minutes. He also stated that the 2nd accused was the custodian of the minutes and that he acted on the instructions of the Governor.
 16. Yusuf Abdi Gedi (PW 13) the CEC Agriculture & Livestock Wajir County Government CEC Agriculture & Livestock Wajir County Government testified that the Cabinet did not authorize Jeff Moria to be the sole signatory to the imprest account and that the County Executive Committee did not hold any meeting in the month of October as the last meeting was held in September and thereafter in December.
 17. PW 16 ALEX KINYANJUA, a Digital Forensic Analyst working with Ethics and Anti-Corruption Commission testified that he undertook forensic analysis of two computers and mobile data extractions from the mobile phones and prepared a report on the findings; that on the spectra laptop recovered from Mohammed Yunis he found a word document with the title “change of signatories of the imprest account” that had been created on 10th October 2018. That the same was a letter dated 5th October 2018 ref no WCG/FEP/ BKS/5/2018 addressed to the manager KCB Bank, the subject being change of signatories on imprest account number 1141515873. He stated that the letter was prepared by Daudi Omar CEC Finance (the Appellant). In cross examination, he stated that he did not take part in the recovery of the laptop and Samsung phone and that he got the name Mohammed Yunis from the investigator.
 18. Fatuma Guyo Dima (PW17), the Manager Service Quality and Compliance at the Kenya Commercial Bank Wajir branch testified on 9th October 2018 that she received cheques which she took to the Branch Manager for further confirmation due to the amounts in the cheques and the fact that only one signatory had signed. That the branch manager approved the cheques by indicating Daud/ Ibrahim thereon and appending his signatures. She stated that the cheques were then processed and



she authorized the transaction in the system and recorded the large debit in the register; That the stamp impression on the cheques and the tellers signature was a confirmation that the cheques had been processed in the system while Jeff Mwororia's signature and ID number signified the collection of the cash. She confirmed that she released the funds to Mr. Hassan, an employee of the County appointed and brought in person by Jeff to carry the money in two batches. She also confirmed that the branch received a letter from the CEC Finance authorizing the Head of Treasury to be the sole signatory to the imprest account and also that subsequently the branch received another letter reverting back to two signatories.

19. Hassan Dulu (PW 18), a cashier at the with KCB Bank Wajir Branch, testified that on 9th October 2018 he was instructed by the line manager to process cheques and that the same were confirmed. He stated that he paid the cheques and after he debited the same the line manager collected the cheques and recorded them in the large debit register. That the signature on the face and back of the cheques belonged to Jeff Mwororia.
20. Adam Siba (PW 19), a cashier at the same bank testified that on the 11th October 2018, he paid Abdiraham Aden a cheque of Ksh. 175, 600 drawn on the 6th October 2018 on the imprest account since the cheque was within his limit; that the cheque was properly drawn.
21. Titus Kariuki Njuki (PW 20), an investigator with the EACC testified that he drafted and delivered a letter, dated 29th October 2018 addressed to the County Secretary requesting for bank statements, cheque books and payment vouchers and was informed by the County Secretary that auditors who were in the County were using some of the documents and had requested for the documents. He stated that the County Secretary who was in the company of the Chief Officer Finance handed him a cheque book for the County Imprest Account, payment vouchers, imprest warrants and certified bank statements and the same were recorded in an inventory.
22. Ali Mandera Ayub (PW 21), also an investigator with the EACC testified that on 8th November 2018 he recorded the statements from officials working at the KCB Wajir Branch which he presented in the Chief Magistrate Anti-Corruption Misc. application No. 18/18, Misc. Application No. 23, Misc. Application No. 21, Misc. Application No. 24, Misc. Application No. 26, Misc. Application No. 28, Misc. Application No. 20 all applications for warrants to investigate the accused persons bank accounts.
23. Soccuda Legas Ahmed (PW 22), a teller with the KCB Wajir branch stated that she processed the impugned cheques after they were confirmed by the branch manager and that one of the cheques had been signed by both Jeff Mwororia and Mohammed Salat.
24. Amina Abdi (PW 23), a Customer Consultant with the KCB Wajir branch testified that on 23rd March 2018, the bank received a letter of even date, whose instructions were to add Michael Muli and Jeff Mwororia as signatories and to remove Abdul Wahid Sheik Sugor Abdile. That after the branch manager confirmed the instructions, she gave Michael and Jeff Mwororia amendment forms to complete after which she too signed the forms. That on 5th October 2018, the branch received a letter from the County instructing the Branch Manager to remove Ahmed Guhad from the imprest account as a signatory and in his place to add Mohammed Salat. She stated that Ahmed Mohammed Salat was then called upon to sign the amendment form.
25. Lapakiyo Henry (PW 24), the Assistant Service Quality and Compliance officer at KCB Bank testified that he provided documents related to the Wajir County Imprest Account to the EACC officials. That as regards overdrafts, the Branch Manager could only receive instructions from the client but



- had no authority to approve the request as the overdrafts were forwarded to Mohammed Musa for authorization.
26. Daniel Hamisi (PW 26), a Data Analyst and Investigator with Safaricom testified that after investigations, they found that account number 072492090 was registered in the name of Siyad Ibrahim Ahmed; that No. 0722380695 in the name of Daud Omar, No. 0720067709 in the name of Jeff Mworira Githinji and No. 0726141422 in the name of Ahmed Sahal Omar. He stated that he did report to that effect.
 27. Abdullahi Hassan Maalim (PW 27) the acting County Secretary and Head of Public Service Wajir in County Government, testified that he signed, certified and issued to the EACC officers the Minutes for the meetings held on the 10th September 2018 and 6th December 2018. In cross examination he stated that the CEC Finance gives directions on matters finance and the law gave him the mandate to deal with the bank. He stated that the Cabinet did not hold any meeting to discuss the loss of Kshs. 26, 100,000. He also stated that during his tenure there were no deliberations on the Ksh. 26, 100, 000 million or on the signatories to the imprest Account.
 28. STEPHEN WANYAMA (PW 28), an investigating officer testified that on the 7th November 2018 he was briefed about the unprocedural withdrawal of Kshs. 26,100,100 from the Wajir County Imprest Account at the KCB Bank Wajir Branch, by Jeff Mworira and Abdalla Omar who then delivered the money to the Governor in Nairobi. That through a letter dated 29th October, 2018 the Ethics and Anti-Corruption Commission requested for several documents and that the County delivered to the EACC a partially used cheque book containing cheque Nos. 007493 to 007500; that the EACC obtained search warrants to investigate the bank Imprest Account but as the County did not avail the documents supporting the withdrawal the EACC served the County Secretary with a search warrant. He testified that the officers searched the Treasury, the CEC Finance office, the County Secretary's office, the Archives, the ICT office and the cash office; that two laptops were recovered in the office of Director Budget; that a red delivery book, was also recovered from the cash office, transfer letter and another letter from the CEC Finance office. Further that a cash imprest account, a cash book of the imprest account, the Imprest Account cheque register and diary of the County Government Wajir were recovered from the cash office. He stated that they could not trace the money and therefore obtained warrants to search the houses of Mohammed Abdi, Jeff Mworira and Siyad Ibrahim; that a number of items were recovered from the Governor's house which they later analyzed and returned to him as they were not of any evidential value. He testified that they also received and analyzed the movement register to have a clear picture of how letters were moving from the County Secretary's office to the other offices outside the County and to establish how the letter dated 6th October 2018 moved from the office of the County Secretary to the office of the CEC Finance. He stated that the letter was not recorded in the delivery book. He further stated that he did not find any documents to support the withdrawal of Ksh. 26, 100,000 million or documents to support the expenditure of that money.
 29. Ambassador Mohammed Mohamud (PW29) testified that he was the Governor of the County Government of Wajir. He stated that the County Executive Committee (cabinet) meetings would be convened by the County Secretary in consultation with the chair and the secretary would then write to the CEC members through their common WhatsApp forum. He stated that the County Secretary was an ex officio member of the Cabinet and was the custodian of the minutes. He also stated that he (the Governor) chaired the meetings held on 10th September 2018 and 6th December 2018 and signed minutes as a reflection of what transpired. He also confirmed the appointments of the Appellant and the other two accused persons. He further stated that he received a letter informing him that Mohammed Salat had taken over from Guhad as the CEC Finance and stated that he quickly communicated to him on email. He contended that although he did not know who authorized the



overdraft, the CEC Finance was tasked to manage the financial matters of the County. Further, that he did not know who withdrew the Ksh. 26,100,000 or who issued instructions for its withdrawal or who received the money. He stated that after he learnt of the allegations he contacted the CEC Finance who informed him that the money was used to pay casual employees. He also testified that the internal audit had not notified him of any misappropriation of funds. He testified that the County had engaged casual employees who demanded payment. That his election was hotly contested but that he was confirmed by the Supreme Court; that the loyalty of staff was divided as most of them were appointed by his predecessor; that the County would be audited yearly and that he was yet to be presented with a report indicating the loss of Ksh. 26,100,000. Lastly, he testified that his Cabinet had not discussed the loss of the money nor had anyone been summoned by the County Assembly to explain the loss and that as Governor there were times he worked on Saturday and that documents could be signed on Saturdays.

30. In his defence the Appellant stated that as the CEC Finance and Economic Planning his duties were inter alia to prepare the budget for approval by the County Assembly, to manage County funds, authorize signatories and source for funds. He stated that the payment, accounting and revenue system was manual and that updating of the cash books was done by the cashiers and he was not involved. He stated that most of the people working in the County were from the previous Governor's clan.
31. In regard to the issue of signatories it was his evidence that upon the transfer of the Chief Officer Finance to the Trade & Industrialization he was replaced by Mohammed Salat; that when he received the letter concerning the transfer he wrote a letter to the Branch Manager, KCB Wajir and instructed him to remove Ahmed Guhad as signatory to the imprest account and to replace him with Mohammed Salat who was taking over the office. He testified that it was the duty of the Bank Manager to change the signatories. He also stated that he spoke to Mohamed Salat who confirmed to him that he had indeed been appointed as the new Chief Officer Finance and had been asked to report immediately. He testified that he made a decision for Jeff Mworira, to operate the account because Mohammed Salat had a sick relative and the casuals needed to be paid as they were demonstrating and because Jeff Mworira was an existing signatory of the account. He contended that he made the decision in consultation with the Governor, the Deputy Governor and the Director Legal. He conceded that he wrote the letters to the KCB Manager requesting Jeff Mworira to operate the imprest account until further notice but denied that he authorized Jeff Mworira (3rd accused at the trial) to draw monies in a manner contrary to the law.
32. In cross examination he stated that he was alive to the Public Finance Management Regulations that required him to designate two signatories for the accounts. He conceded that his letter authorizing Jeff Mworira to be the sole signatory did not comply with Regulation 85(2) but reiterated that his decision had the blessing of the Governor, the Deputy Governor and the Director Legal. He also contended that when Mohammed Salat reported on duty he (the Appellant) revoked the letter by writing another letter to the Bank. He further stated that the money withdrawn by Jeff Mworira was used to pay casuals.
33. Learned Counsel for the parties consented to canvassing the Appeal by way of written submissions.

Submissions of the Appellant

34. In his written submissions Learned Counsel for the Appellant contends that the trial court failed to appreciate that the ingredients of Section 45 (2) of the *Anti-Corruption and Economic Crimes Act* (ACECA) had not been proven; that there no evidence was adduced to prove that the Appellant either willfully or carelessly failed to comply with the applicable procedures relating to the procurement, allocation, sale or disposal of property, tendering or contracts, management of funds or incurring of expenditure; that the court failed to take into consideration the appellants defense that explained the circumstances which led to the authorization and which demonstrated that the actions of the appellant



were backed by consultations within the County and that had the court considered the defence, it would have arrived at a conclusion that a conviction was unsafe.

35. Counsel submitted that the trial court erred by failing to consider the defence of good faith offered by the Appellant, and specifically, the court failed to consider that: a) the evidence tendered by the appellant that the operations in the county were crippled hence the need to act fast under the circumstances; that the working environment in the county was hostile; that the Appellant held wide and deep consultations and only wrote the letter on advice from his seniors in the county; that the appellant wrote the letter in the best interests of the county; that the money was used for its intended purpose and there was no complaint or adverse report regarding a loss.
36. The Appellant submitted further that the trial court shifted the burden to the accused in the following manner: by making a finding that the Chief Officer Finance was mandatory account in the imprest account when there was no such provision in any law hence creating an evidential burden on the appellant; appreciating that the Appellant received an approval from the 2nd accused to authorize the 3rd accused to operate the imprest account through a single signature but shifting the burden to the appellant and convicting him on the basis of the same approval; by making a finding that the prosecution did not call a crucial witness who collected the money from the bank and concluded that the failure to call the witness leads to the inference that the evidence will be adverse; by ignoring the clear evidence of a crisis in Wajir County and also ignoring the fact that the reasons of absence of PW2 was not within the control of the Appellant and thus shifting the burden to the appellant on this issue; by failing to take into consideration the efforts made by the Appellant to contact the incoming chief officer finance and further making a finding that the appellant did not make efforts to trace Mohammed Salat when the evidence demonstrates the efforts, he made thus shifting the burden of proof to the Appellant.
37. Counsel stated that there was an election dispute against the Governor under who the Appellant was serving; that they had inherited staff who had been working under the previous Governor hence their loyalty was divided; that as a result the activities of the County were crippled and the working environment was hostile; that the casualties were very difficult to deal with and were always paid in cash from the imprest account and as the County did not have money, the Appellant applied for an overdraft to ensure their payments were made. Counsel stated that the overdraft was not for personal use.
38. Counsel contended that the trial court made a finding that no evidence to prove how the money withdrawn from the account was handled after it was collected from the bank. He contended that the Governor of Wajir testified that the County had not lost any money; that, there were no adverse audit reports regarding the money and he had not been summoned to the assembly to explain any loss of money. That the court having made this finding, it was unsafe to maintain the conviction against the appellant. Counsel argued that the trial court having come to the conclusion that the Appellant did not benefit from withdrawals and that the County did not lose any money, the sentence imposed is harsh and excessive. Counsel urged this court to allow the appeal, quash the conviction and set aside the sentence.

Submissions of the Respondent

39. Learned Counsel for the Respondent placed reliance on the written submissions dated 12th April 2023 and begun by giving a summary of the evidence and submissions by both sides at the trial and submitted that Jeff Mworira was appointed as the sole signatory to the Imprest Account and this was done after consultations with the Governor and the County Director Legal; that the funds in question were used to pay the casualties as there was tension in the county due to delay in payment of salaries; that the



witnesses who gave evidence as PW4 to PW11 testified that there was no meeting held to authorize the appointment of Jeff Mworira as a signatory. That however PW2 testified that it was within the CEC Finance's mandate to make the appointment; that the KCB Bank employees confirmed that the overdraft was processed but conceded that the cashier or employee of the County by the name Hassan was not called to testify. Counsel urged the court to evaluate the evidence in totality and the law relating to appointment of signatories in totality and uphold the conviction and sentence.

Issues for determination

40. The following issues arise for determination:
1. Whether the Appellant's conviction on the charge of willful failure to comply with the laws relating to management of public property and in particular Regulation 85(2) of the Public Finance Management Regulations is safe.
 2. Whether the sentence imposed by the trial court is excessive.

Analysis and determination

Issue (1) Whether the Appellant's conviction on the charge of willful failure to comply with the laws relating to management of public property and in particular Regulation 85(2) of the Public Finance Management Regulations is safe.

41. This being a first appellate court, I have considered and evaluated the evidence adduced in the trial court so as to arrive at my own independent conclusions whilst bearing in mind that I did not have the opportunity of seeing and hearing the witnesses first hand. (see the case of Okeno vs. Republic (1972) EA 32.)
42. The Appellant was charged with the offence of willful failure to comply with laws relating to the management of public property contrary to Section 45(2) (b) of the [Anti-Corruption and Economic Crimes Act](#). The Section states:
- “(2) An officer or person whose functions concern the administration, custody, management, receipt or use of any part of the public revenue or public property is guilty of an offence if the person-
- (a) ..
 - (b) wilfully or carelessly fails to comply with any law or applicable procedures and guidelines relating to the procurement, allocation, sale or disposal of property, tendering of contracts, management of funds or incurring of expenditures”
43. The particulars of the charge allege that the Appellant in appointing Jeff Mworira as a sole signatory to the Wajir County Government imprest account contravened regulation 85(2) of the Public Finance Management (County Governments) Regulations 2015 which law provides as follows:

“ 85.

- (2) (2) There shall be two authorized signatories to sign a cheque drawn or electronic payment or fund transfer on a county government bank account.”



44. It is not contested that the Appellant was the County Government of Wajir County Executive Member for Finance, the equivalent of a Cabinet Secretary in the National Government. It is not also contested that the County Government of Wajir had an Imprest Account at the KCB Bank, Wajir Branch. Neither is it contested that at the time in issue the said Imprest Account had a sum of Kshs.21,100,000. PW17 testified that a sum of Kshs. 25,000,000 was credited into the account on 2nd October 2018 following an overdraft request by the Appellant and as the account previously had a balance of Kshs.1,100,000 the balance in the account was Kshs.26,100,000. In his defence the Appellant conceded that he applied for the imprest so the balance is not disputed. It is my finding that there was also evidence beyond peradventure which proved beyond reasonable doubt that the said sum of Kshs.21,000,000 was withdrawn from the Imprest Account through cheques signed by Jeff Mworia. This after the Bank Manager received the letter from the Appellant indicating that Jeff Mworia would be the sole signatory of the account effective from the date of the letter dated 6th October, 2018.
45. In his defence the Appellant admitted that he authored the letter dated 6th October 2018 (PEXh 6) in his capacity as the County Executive Committee Member Finance.
46. The authority to appoint the signatories to the County Government bank accounts is or was provided for in Section 148(1) (2) & (3) of the [Public Finance Management Act](#) 2012 states: -

“Section 148. Designation of accounting officers for county government entities by the County Executive Committee member for finance

1. A County Executive Committee member for finance shall, except as otherwise provided by law, in writing designate accounting officers to be responsible for managing the finances of the county government entities as is specified in the designation
2. Except as otherwise stated in other legislation, the person responsible for the administration of a county government entity, shall be the accounting officer responsible for managing the finances of that entity.
3. A County Executive Committee member for finance shall ensure that each county government entity has an accounting officer in accordance with Article 226 of [the Constitution](#).”

47. Regulation 85 (1) & (2) (3) & (4) of the Public Finance Management (County Governments) Regulations 2015 provides: -

“Regulation 85. Cheques and electronic payments.

- (1) All signatories in respect of cheques, or electronic payments and fund transfers shall be designated by the Accounting Officer and any changes in signatories shall be authorized by him or her.
- (2) There shall be two authorized signatories to sign a cheque drawn or electronic payment or fund transfer on a county government bank account.
- (3) The names and designation of those officers in paragraph (1) and their specimen signatures shall be advised to the bank where the account is held by the accounting officer, with copies of the advice sent to the County Treasury, and any change in signatories shall be advised in writing.



- (4) The signatories under this regulation shall—
- (a) initial the counterfoil or enter with their personal passwords;
 - (b) be equally responsible for the regularity of the payment; and
 - (c) thoroughly scrutinize the documents supporting the payment.”

48. It was the Appellant’s contention that following the transfer of the Chief Officer Finance to another department he designated the incoming Finance Officer Mohammed Salat (PW2) to be the signatory to the Imprest Account a fact which was corroborated by the outgoing Chief Officer Finance (PW1), the incoming Finance Officer (PW2) and officials of the KCB Bank, Wajir Branch where the account was domiciled. The Appellant stated that the incoming Chief Officer Finance’s mother however got ill and so he, the Appellant wrote a letter to the Bank that Jeff Mworira (accused 3) who was already a signatory to the account would henceforth be the sole signatory. This despite that the account had to have two signatories as provided by Regulation 85(2) of the Public Finance Management (County Governments) Regulations 2015.
49. The Appellant also testified that he made the appointment in good faith as the County had cash flow problems as their competitors had lodged complaints with the controller of budget which had almost crippled the county operations. He stated further that he made the decision in consultation with the Governor, the County Director Legal and his colleague County Executive Committee members. He stated that he applied for an overdraft of Ksh. 25 million to pay the casual employees and to cater for departmental operations and that the money was not for the personal use of Jeff Mworira.
50. My reading of Section 148(1) of the *Public Finance Management Act* however is that the role of the County Executive Committee Member Finance extended only to designating Accounting Officers to be responsible for managing the finances of the County as provided in Section 148(1) of the *Public Finance Management Act*. It was then left to the designated Accounting Officers to designate the signatories in respect of cheques or electronic payments and fund transfers. The designated Accounting Officer was also responsible for authorizing any changes in signatories. That is my reading of Regulation 85(1) of the Public Finance Management (County Governments) Regulations 2015. The law clearly differentiated between a County Executive Committee member (CEC) and an Accounting Officer and there can be no confusion between them. Clearly therefore, the Appellant did not have any power under the law to designate signatories to the County Government Imprest Account let alone to designate Jeff Mworira as a sole signatory to the account. What he did was not just irregular but it was illegal as it was usurpation of the power of the Chief Finance Officer who he had designated as the Accounting Officer for the County Government’s Finance affairs. If he was allowed otherwise by law to designate signatories or to change the signatories, he did not provide evidence of it.
51. Saying that he did it in consultation with the Governor and the County Director Legal does not help matters because there was no requirement in law for them to be consulted in the exercise of those powers by the responsible officer. Whatever the responsibilities of the relevant officer they were to be exercised solely. That is what Section 148 (1) provides.
52. That the employees of the County were hostile as they belonged to the clan of the former Governor is also not a defence. The illegality the Appellant committed and which he did knowingly, as he has readily admitted, led to the withdrawal of public funds in the sum of Kshs.21,100,000 through cheques signed by one signatory which was against the clear provision of Regulation 85(2) of the Public Finance Management (County Governments) Regulations 2015. So not only did the Appellant flout the clear provisions of Regulation 85(1) but he also did those of Regulations 85(2). That the Governor was a



party to the illegality cannot make it right or render it lawful. Indeed, what followed after the Appellant made Jeff Mworira a sole signatory is a clear manifestation that he did not do it in good faith. Why, even if there was an outcry by the workers, even were we to assume that he had power to designate the signatories, didn't he appoint another person to be signatory with Jeff Mworira? There were many other officers in that department who could have been designated as signatories together with Jeff Mworira as the return of the Chief Officer Finance was awaited. The Appellant willfully failed to comply with the law, procedures and guidelines relating to management of funds of the County and I am satisfied that this charge was proved against him beyond reasonable doubt and that the conviction is safe.

Whether the sentence meted against the Appellant was excessive

53. It is trite that sentencing is at the discretion of the court. In the case of *Ogolla s/o Owuor vs. Republic*, [1954] EACA 270, the Court of Appeal pronounced itself on this issue as follows:-

“The Court does not alter a sentence unless the trial Judge has acted upon wrong principles or overlooked some material factors.”

54. The trial court sentenced the appellant to a fine of Kshs. 800,000 or in default, four years' imprisonment. The prescribed fine for the offence of willful failure to comply with the laws relating to management of public property contrary to Section 45(2) (b) of the *Anti-Corruption and Economic Crimes Act* is prescribed as follows under Section 48 of the *Anti-Corruption and Economic Crimes Act*:-

“ 48. Penalty for offence under this Part:-

1. A person convicted of an offence under this Part shall be liable to— (a) a fine not exceeding one million shillings, or to imprisonment for a term not exceeding ten years, or to both; and (b) 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.”

55. The trial court considered the appellant's mitigation before passing out the sentence. This court has also considered the circumstance of this case and comes to the conclusion that the sentence imposed by the trial court was not harsh or excessive. The sentence shall remain undisturbed.

56. The upshot is that the appeal lacks merit and the same is hereby dismissed. The conviction and sentence are upheld.

SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 6TH DAY OF JULY, 2023.

E.N. MAINA

JUDGE

