



**Republic v Ondieki & another (Anti-Corruption and Economic Crimes
Case 11 of 2020) [2021] KEMC 4 (KLR) (11 February 2021) (Judgment)**

Republic v Concelia Aoko Ondieki & another [2021] eKLR

Neutral citation: [2021] KEMC 4 (KLR)

**REPUBLIC OF KENYA
IN THE ANTI-CORRUPTION MAGISTRATE'S COURT
ANTI-CORRUPTION AND ECONOMIC CRIMES CASE 11 OF 2020
LN MUGAMBI, CM
FEBRUARY 11, 2021**

BETWEEN

REPUBLIC PROSECUTOR

AND

CONCELIA AOKO ONDIEKI 1ST ACCUSED

CHRISTINE WEGESA CHACHA 2ND ACCUSED

JUDGMENT

1. The two accused namely; Concelia Aoko Ondieki and Christine Wegesa Chacha were arraigned in court on 12th February, 2010 and answered to the following charges:

Count 1: False Accounting by a Public Officer contrary to section 331(1) as read with section 331(2) of the Penal Code, Cap 63 Laws of Kenya.

2. The first count is a joint count for both accused. The particulars are that on or about 29th June, 2009, at Jogoo House, in Nairobi, within Nairobi Province, being an Acting Director of Secondary and Tertiary Education; and Senior Education Officer respectively at the Ministry of Education, officers charged with the management of public revenue, to wit Kshs. 1,478,581; money intended to facilitate infrastructure needs assessment workshops for secondary schools in the Coast Region, jointly knowingly furnished a false return of money received for the said workshop during the period 13th June 2009 to 29th June, 2009.



Count II: Fraudulent acquisition of public property contrary to section 45 (1) (a) as read with section 48 of the Anti-Corruption and Economics Crimes Act, 2003.

3. This offence is against the 1st accused only, Concelia Aoko Ondieki. The particulars are that on or about June 29, 2009 at Jogoo House, in Nairobi, within Nairobi Province, being a person employed by a public body to wit the Ministry of Education as an Acting Director of Secondary and Tertiary Education, fraudulently acquired public property in the sum of Kshs. 1, 078,581 being part of Kshs. 1,478,581 money intended to facilitate infrastructure needs assessment workshops for secondary schools in the Coast Region during the period 13th June, 2009 to 29th June, 2009.
4. The remaining counts, that is, Count III to Count VII are various forgery charges against the 2nd accused, Christine Wegesa Chacha.

Count III: Forgery contrary to section 349 as read with section 345 of the Penal Code, Chapter 63 of the Laws of Kenya.

5. The particulars of charge are that on or about June 15, 2009 at an unknown place, being a person employed by a public body to wit Ministry of Education as a Senior Education Officer, with intent to defraud made a false fuel cash sale receipt serial number 56606 purporting it to be a genuine cash sale receipt issued by Warsame's Traders for 124 litres of fuel worth Kshs. 9,176 allegedly drawn into a Government of Kenya Motor Vehicle registration number GK A905G on June 15, 2009.

Count IV: Forgery contrary to section 349 as read with section 345 of the Penal Code, Chapter 63 of the Laws of Kenya.

6. The particulars being that on or about June 21, 2009 at an unknown place, being a person employed by a public body to wit the Ministry of Education as a Senior Education Officer, with intent to defraud made a false fuel cash sale receipt serial number 56617 purporting it to be a genuine cash sale receipt issued by Warsame's Traders for 96 litres of fuel worth Kshs. 7,104 allegedly drawn into a Government of Kenya Motor Vehicle registration number GK A905G on June 21, 2009.

Count V: Forgery contrary to section 349 as read with section 345 of the Penal Code, Chapter 63 of the Laws of Kenya.

7. The particulars being that on or about June 23, 2009 at an unknown place, being a person employed by a public body to wit the Ministry of Education as a Senior Education Officer, with intent to defraud made a false fuel cash sale receipt serial number 56626 purporting it to be a genuine cash sale receipt issued by Warsame's Traders for 124 litres of fuel worth Kshs. 9,176 allegedly drawn into a Government of Kenya Motor Vehicle registration number GK A905G on June 23, 2009.

Count VI: Forgery contrary to section 349 as read with section 345 of the Penal Code, Chapter 63 of the Laws of Kenya.

8. The particulars are that on or about June 17, 2009 at an unknown place, being a person employed by a public body to wit Ministry of Education as a Senior Education Officer, with intent to defraud made a false fuel cash sale receipt serial number 13184 purporting it to be a genuine cash sale receipt issued by Trans Energy Kenya Ltd for 124 litres of fuel worth Kshs. 9,176 allegedly drawn into a Government of Kenya Motor Vehicle registration number GK A905G on June 17, 2009.



Count VII: Forgery contrary to section 349 as read with section 345 of the Penal Code, Chapter 63 of the Laws of Kenya.

9. The particulars are that on or about June 22, 2009 at an unknown place, being a person employed by a public body to wit the Ministry of Education as a Senior Education Officer, with intent to defraud made a false fuel cash sale receipt serial number 119081 purporting it to be a genuine cash sale receipt issued by Malindi Service Station for 125 litres of fuel worth Kshs. 9500 allegedly drawn into a Government of Kenya Motor Vehicle Registration number GK A905G on June 22, 2009.
10. The Prosecution set out to prove the above charges whose brief background is follows.
11. In the financial year 2008/2009; the Ministry of Education embarked on various activities to support the introduction of free secondary education by the Government.
12. Part of the Programmes to be carried out was the assessment of the existing infrastructure in schools and their improvement to cope with expected surge in admissions. Education stakeholders had to be sensitized as part of this project.
13. Consequently, according to P. exhibit 1- (that is the memo that was sent to Permanent Secretary and Ministry of Education Accounting Officer), before the money for schools' infrastructure projects could be released to the selected institutions, assessment of the existing infrastructure to establish their status and needs was to be carried out first together with the sensitization of the institutional managers about this particular programme.
14. This is the genesis of the infrastructure needs assessment workshops that were carried out throughout the country coordinated by the Ministry Education Officers from the Ministry Headquarters.
15. This case relates to the infrastructure needs assessment workshops for Coast Region where Kshs. 1, 478, 581/- had been approved for the activity by the Ministry's Accounting Officer who was the Permanent Secretary, Prof. Edward Karega Mutahi (PW 7).
16. The case that the Prosecution sets out to prove against the accused is that the accused, being public officers, had a duty over the management of the public funds approved to undertake the workshop which they failed to discharge and instead furnished falsified records of expenditure relating to the money entrusted to them. That there was also fraud perpetrated by the 1st accused as result of which she acquired part of the said money amounting to Kshs. 1, 078, 481/- whereas the 2nd is alleged to have forged five receipts on account of purchase of fuel for the Government vehicle that had been assigned to them from Mombasa District Education Office.
17. The accused pleaded not guilty to the specific allegations that were levelled against them on account of the above. The Prosecution called 41 witnesses in an effort to prove its case against the accused.
18. Professor Edward Karega Mutahi (PW 7) was the Permanent Secretary at the Ministry of Education from January, 2003 to June, 2010. He was thus the Ministry's Accounting Officer. That meant that he was in charge of authorizing all the expenditure in relation to the funds his Ministry was allocated.
19. He testified that the Department of Secondary & Tertiary Education which was one of the Departments under the Ministry wrote a memo requesting his approval of the budget it had attached to carry out various activities, among them, the infrastructure needs assessment, as per the internal memo- P. exhibit 1. He granted that approval.



20. After the activities were completed, fiduciary audits were conducted. It was revealed that about 30 officers had not properly accounted for the money that had been entrusted to them whereby forged documents to cover for the misuse of the funds was detected.
21. On cross-examination, Prof. Edward Karega Mutahi (PW 7) was firm that it was not right for any officer to pick imprest on behalf of another without his authority and that he was not aware this had been happening, pointing out that if he had been aware, he would have stopped the practice.
22. Martin Jay Ondego Orwa (PW 1), was a Deputy Director of Education in the Ministry of Education at the time.
23. He testified he forwarded the schedule containing the budget for the infrastructure needs assessment for the approval of the expenditure after he had received it from the desk officer who was in charge of infrastructure at the Ministry. He forwarded it via the memo dated 14th May, 2009 (P. exhibit 1). The schedule of the attached budget was produced as (P. exhibit 1 b).
24. Although he did not personally receive the feedback, he testified that he was aware the activity was subsequently approved.
25. He testified that he was initially earmarked to apply for the imprest for the infrastructure needs activity in Coast Region but he did not because he was out of the office by the time of that activity. Instead, he asked his Director then, Mrs. Concelia Ondieki (1st accused) to let someone else take the imprest as he was not available, hence he did not sign for any imprest. Initially he gave verbal instructions but he later translated those instructions into writing as per internal memo- P. exhibit 5.
26. He identified the internal memo dated 10th June, 2009 (P. exhibit 5) titled 'Authority to pick imprest for Martin Orwa' being the memo he wrote and signed authorizing Mrs. Concelia A. Ondieki P/No. 19901540, Director Secondary & Tertiary Education to pick the imprest as he was away from the office.
27. Referring to imprest warrant number 0520642 (P. exhibit 3) for Kshs. 1, 478,581 which had his name Martin Orwa, he was categorical that he did not sign the said imprest warrant. He remarked as follows when he was shown the imprest warrant:

“...I can see the signature on the imprest warrant. I am familiar with the signature. The signature is that of Concelia Ondieki...”
28. He further told the Court that although he was aware that the activity he was scheduled to undertake in Coast region was done, he did not know who stepped in for him.
29. Concerning the surrender of the imprest through payment voucher- P. exhibit 4, he said he knew nothing about the surrender voucher despite the surrender voucher bearing his name. When shown the payment voucher- P. exhibit 4, he commented:

“...The payment voucher is made in my name. I am not aware of the payment voucher. The signature appearing on the document is not mine...”
30. On cross-examination he reiterated that he did not delegate to any person to conduct the activity in the Coast Region on his behalf.
31. Elias Kimani Macharia (PW 3) was the District Accountant in Nzauni District at the time he testified in Court. However, between the year 1997 to December, 2009, he was based at the Ministry of Education Headquarters cash office section where his work involved making payments after confirming that the voucher had gone through the required processes.



32. In regard to imprest warrant bearing the name of Martin Orwa (P. exhibit 3) which was an imprest for infrastructure needs assessment, he testified that it had passed through all the required stages. He explained that although the imprest warrant had the name of Martin Orwa, the person to whom he paid the money under that imprest warrant was Mrs. Concelia Ondieki, the 1st accused. He elaborated:
- “...Mr. Orwa was away but he gave a memo authorizing Concelia Ondieki to collect the money on his behalf. I paid the money to Concelia Ondieki. She did not have the letter of authority but she brought it to me later after I had paid...”
- He continued:
- “...Concelia duly signed and gave her identity card no. 9290778. I paid the imprest in cash to Concelia...”
33. He testified that at a later date, the Principal Accounts Controller raised a query asking him to explain why he had paid the money to Concelia Ondieki. He responded by attaching the authority memo- P. exhibit 5 that had been written by Martin Orwa.
34. Nancy Nyaguthie Kinyua (PW 5) served as the Principal Accountant in charge of Accounting Unit at the Ministry of Education until February, 2011. She testified that she approved the imprest warrant relating to infrastructure needs assessment- P. exhibit 3 which was in favour of Martin Orwa. However, the recipient of the said imprest was Mrs. Ondieki according to the signature on the imprest warrant which she was familiar with. She testified that she had not given approval for payment to be made to someone else other than Martin Orwa.
35. On cross-examination, she stated that authority to pick the imprest on behalf of another person ought to be addressed to and come from the accounting officer only.
36. Charles Onsengo Opindi (PW 2) told this Court that he worked at the Ministry of Education Accounts Office in the voucher preparation section. In June 2009, there were various sensitization programmes the Ministry was running. He had been assigned to deal with surrender of imprests in respect those sensitization activities.
37. In regard to the surrender voucher- dated 30/6/2009 -P. exhibit 4 which was for the imprest in question-(P. exhibit 3); he said:
- “...I am the one who prepared the same. This was in the name of Mr. Orwa. I was called to Mrs. Ondieki’s office where I picked the imprest surrender voucher. I proceeded to her office where she gave me the document where I picked the surrender of imprest which had all its accompanying documents. I was asked to go and prepare a surrender voucher. I did not ask why she was giving me a surrender warrant in the name of Martin Orwa...”
38. On cross-examination, he said he did not ask Mrs. Ondieki why she was giving him Mr. Orwa’s document.
39. Richard Ojuok Yugi (PW 4) was a Senior Clerical Officer in the Ministry of Education at the material time. He testified that in June 2009, the Acting Director of Higher Education, Mrs. Concelia Ondieki (1st accused) called him and informed him that he was going to take part in the infrastructure needs assessment project that the Ministry was running.
40. He was informed that he would be joining Mrs. Christine Chacha (2nd accused) to the Coast region and was thus paid his ten days per diem. On the date of travel, they both flew to Mombasa via the Kenya



Airways flight. The following day, they commenced the exercise whereby they traversed the region visiting several schools in Malindi, Mombasa and Makueni. Finally, about 60 participants gathered at Mombasa Coast Girls where they were taken through the questionnaire by Mrs. Chacha. His role was distributing and collecting the filled questionnaires. He testified:

“...we gathered at Mombasa Coast Girls. The gathering was attended by approximately 60 participants...”

41. He stated that during this activity, he witnessed Mrs. Chacha reimbursing the participants transport although he could not know if this also included lunch reimbursement.
42. When he was shown the lunch payment schedules, (P. exhibit 6 (b) i & ii), he confirmed that he was conversant with the two schedules adding that after they had come back to Nairobi upon completion of the activity, Mrs. Chacha asked him to prepare those schedules by transferring details from other schedules into new schedules and that she instructed him not to fill the column for the amount and the signatures. He confirmed that the names in the schedules P. exhibit 6 b (i) & (ii) was in his handwriting.
43. On cross-examination by Mr. Chacha for the 2nd accused he said he did not participate in the making payments.
44. The Prosecution called Standard and Quality Assurance Officers and School Principals who were based in the Coast region at the time and who were reflected in the payment schedules as having received the various amounts.
45. A number of those that testified before this court stated that they never attended the infrastructure needs workshops organized by the Ministry Education Headquarters yet the transport reimbursement and payment schedules for lunches that were shown to them during investigations and exhibited before this court; their correct personal details regarding their names, designation, TSC numbers, and their District stations were correctly recorded but their handwriting and signatures in those schedules were not theirs. They also confirmed that they were not paid the amounts reflected in those payment schedules since they had not attended the workshops.
46. Nzalo Gona Mackenzie (PW 6) was the Standards and Quality Assurance Officer in Kwale until January 2010. He testified that he was neither aware of infrastructure needs assessment workshop nor did he participate in the same hence he could not have received the Kshs. 6000/- allowance indicated in “Payment Schedule for Officers Lunch” – (P. exhibit 7).
47. PW 19- Hellen Navalina Aruga who was the Standards and Quality Assurance Officer, Changamwe testified that she did not attend the infrastructure Assessment Needs Workshop and thus was not paid anything on account of that workshop. She attested that P. exhibit 7 ‘Payment Schedule for Officers Lunches- 14th June -24th June, 09’ at entry no. 15 captures correctly her name, designation and job group but not her personal number. She said she never received the amount of Kshs. 6000/- indicated in the schedule and the handwriting plus the signature were not hers.
48. A Similar account was given by Moses Bosire Ongere (PW 31) who was the Standards and Quality Assurance Officer Changamwe also said he did not attend the workshops yet payment schedules reflected that he received Kshs. 6000/- as was indicated in entry no. 13 of P. exhibit 7 which had a signature that did not belong to him as well as the handwriting but details in the document matched his personal particulars.
49. Obadiah Ngethe Ngugi (PW 10) was the Principal of Diani Secondary School testified that although the payment schedule P. exhibit 6 (a) titled ‘Payment Schedule for Participants Lunches for Needs



- Assessment Workshop held in Coast Province on 17th June, 2009' indicated details of his name and TSC number being no. 4 in the list against an amount of Kshs. 600/-; the signature did not belong to him and also he never attended the infrastructure needs assessment workshop. He also confirmed the details appearing in the attendance sheet- P. exhibit 11 related to him but denied signing it.
50. Cornelius Ndoloi Mnene (PW 15), the Principal of Gongoni Secondary School stated that despite entry no. 13 in P. exhibit 17 titled 'Transport reimbursement for participants, Region Coast, 17/06/09' reflecting an amount of Kshs. 1600/- against his name and other personal details, he neither attended that workshop nor was he paid that amount. He also disowned the handwriting as well as the signature.
 51. Similar evidence was given by Dorothy Mulongo Wanje (PW 14), the Principal of Roka Secondary School in respect of entry number 12 being lunch payment of Kshs. 600 in P. exhibit 6 (a) and the transport reimbursement of Kshs. 1600/- reflected as entry no.12 in P. exhibit 17.
 52. Harrison Nguma (PW 21), the Principal of Shariani Secondary School testified that he never attended the workshop yet there was payment schedule P. exhibit 6 (a) that captured his name, personal number and designation at entry no. 8 showing he got Kshs. 600.- as lunch reimbursement. He denied the signature on the document too and the handwriting. The same applied to attendance/registration sheet- P. exhibit 11 in respect to entry no. 8.
 53. Philip Odhiambo Patta (PW 28) said that despite not attending the infrastructure needs assessment training, payment schedules with his correct particulars showed that he received Kshs. 600/- for lunches and 1600/- for transport as per entry no. 10 in P. exhibit 12 and P. exhibit 14 which vehemently disputed insisting that even the handwriting and the signatures in those documents were not his.
 54. Gladys Nyamula Chivatsi (PW 16), the Principal Ngala Memorial Girls Secondary School testified that despite not attending any workshop on infrastructure needs assessment in June, 2009; she was shown schedules in respect of the said workshops containing her identity details, TSC number and designation indicating she was paid Kshs. 1600/- transport reimbursement as per P. exhibit 11 and lunch reimbursement of Kshs. 600/- as per P. exhibit 6 (a).
 55. Roselyne Mwalukuku (PW 36) who was then a Principal at Allan Mjomba Secondary School said she did not attend the training yet the registration/attendance sheet dated 20/6/2009- P. exhibit 26 had her personal details and further, entry no. 11 of transport reimbursement schedule- P. exhibit 27 indicated she received Kshs. 2000/-. The handwriting and signature were not hers. There was also the schedule for participant's lunches – P. exhibit 28 with similar details and showing that she received Kshs. 600/- which was not true, the signature and handwriting too were not hers.
 56. Jane Wambui Kariuki (PW 37) who was the Principal of Kakoneni Girls also did not attend the infrastructure needs assessment workshop and her evidence in connection with payment reflected against her name in connection with Kshs. 2000/- transport reimbursement and kshs. 600/- lunch reimbursement under entry no. 2 in P. exhibit 15 and P. exhibit 22 respectively was that she was not paid. The signature as well as the handwriting did not belong to her.
 57. There were also Standards and Quality Assurance Officers as well as School Principals who testified that they in fact attended the infrastructure needs assessment workshops and went ahead to receive the transport and lunch reimbursements. They also pointed out that they filled the payment/attendance schedules at the venues in their own handwriting and signatures. However, the ones shown to them during investigation and later exhibited in court bore different handwritings and the signatures from theirs and amounts shown against their names was not what they received at the workshop. The amounts varied from witness to another but the common thread in their testimonies was that the amount they received and signed for was less than what was reflected in the later schedules showing



the payment of lunches and transport and also they were not in their handwriting or signature. The corresponding attendance lists were also not in their handwriting or signatures.

58. Absalom Odhiambo Ogeno (PW 32), the Standards and Quality Assurance Officer Mombasa, testified he attended the infrastructure needs assessment in June, 2009. He was paid Kshs. 200.- as transport reimbursement and signed for it. He was firm that he did not receive Kshs. 6000.- that was indicated against his name and other personal details shown as entry no. 4 in P. exhibit 7 ‘payment schedule for officers’ lunches’. He testified that the signature and handwriting on the said document did not belong to him.

59. Janet Kiruriti (PW 9), was the Principal Coast Girls, Mombasa where the infrastructure needs sensitization workshop was held on 19th June, 2009.

60. She was given Kshs. 600/-. Commenting on registration schedule P. exhibit 9, she confirmed the details relating to her name, identity card, TSC number and District but disowned the signature.

“...All entries in that row are not in my handwriting. Signature also is not mine. I never authorized anyone to sign for me...”

61. Dominic Chimwani (PW 11), was the Principal of K.P. Senior Secondary School in Mtwapa. He attended the infrastructure needs assessment workshop on 18/6/2009 at Barani Secondary School in Malindi. He said it took about two hours. He was paid Kshs. 1000/- for transport. He was shown transport reimbursement schedule dated 18th June, 2009 where it was indicated he received Kshs. 1,600/- transport reimbursement. He insisted that he only received Kshs. 1000/-.

62. He was shown Payment Schedule-P. exhibit 12 titled ‘Payment Schedule for Participants Lunches for Needs Assessment at Coast on 18/6/2009’ he said his name was indicated as entry no. 5 but the handwriting and signature did not belong to him. He also testified that the registration/attendance-P. exhibit 13 list for 18th June, 2009 was not in his handwriting and that the signature was also not his. This is despite the fact that he had registered his own attendance during the meeting.

63. Kalume Juma Mathias, (PW 12) who was the Principal of Kibokoni Secondary School in Malindi confirmed attending the workshop at Barani Secondary School on 17/6/2009 and receiving Kshs. 1000/- for lunch and transport. He filled all the details by himself. However, looking at the registration/attendance list dated 19th June, 2009- P. exhibit 15, he testified that his name was misspelt with his name mathias captured as Mathews. He denied that these entries were in his handwriting. The signature too was not his. Equally, in Transport reimbursement schedule dated 19th June, 2009- P. exhibit 16, where his details are captured as no. 8, it showed he received Kshs. 2000/- which he denied and further insisted that the signature against the amount did not belong to him.

64. Joash Momanyi (PW 13) from Chasimba Secondary School evidence was that he attended the infrastructure needs assessment training at Barani Secondary School where he received a transport reimbursement of Kshs. 1200/- only; wrote down his name and other particulars and signed. He denied the payment reflected in entry number 2 of P. exhibit 14 showing he was paid a transport reimbursement of Kshs. 1600/- and also in P. exhibit 12, which indicated he received Kshs. 600/- under the payment schedule for participants’ lunches. He equally denied that the attendance/registration list-P. exhibit 13 was the one he filled his details and signed. In all the three schedules. Payment schedule for lunches- P. exhibit 12, Transport reimbursement- P. exhibit 14 and attendance/registration schedule-P. exhibit 13, he attested that the documents were not in his handwriting and signature.

65. Beatrice Afandi (PW 23) from Maweni Secondary School testified that she attended the infrastructure needs training at Coast Girls and was paid Kshs. 500 for lunch of which she filled her particulars and



signed for the money. However, during investigations the document she was showed which had all her details correct but not in her handwriting and signature and indicating she was paid Kshs. 600/- at entry no. 5 of participants lunches for needs assessment on 20/6/2009- P. Exhibit 24. The same was the case with regard to registration/attendance sheet- P. exhibit 23, it was neither in her handwriting nor signature.

66. Paul Kamau Kibiru, (PW 24), of Bale Secondary School and Emmanuel Mangi Wara (PW 25) of Galana Secondary School testified as much in respect of payments they actually received vis-à-vis the variances in the payment schedules showed to them in Court. Paul (PW 24) said he received 1300/- but in entry no. 8 in P. exhibit 14, it was indicated Kshs. 1600/- whereas Emmanuel (PW 25) was paid 1200/- yet in entry no. 5 of P. exhibit 18 where his personal details are captured, it was showing 1200/-.
67. The same line of evidence received Mulewa Safari Katana (PW 17) of F.B. Tuva Secondary School who said he was only paid Kshs. 1000/- at the end of training and disputed Kshs. 2000/- reflected against his name and particulars entry no. 10 in P. exhibit 20 and also Kshs. 600/- in P. exhibit 19. In any case, the handwriting and signature did not belong to him. Price Sita Mbaru (PW 29) of Taru Secondary School, Mwambezi Ndune (PW 30) of Sokote Secondary School Mima Omar Athman (PW 33) and the then Acting Deputy Principal of Mweri Secondary School gave similar accounts.
68. Immanuel Mbaru Kombe (PW 38) of Paul Harris High School also testified that he only received Kshs. 1300/- and Kshs. 600/- in lunch allowance as opposed to amount entered against his name and other particulars in entry 9 in P. exhibit 14 that indicated kshs. 1600/- and P. exhibit 12 that showed he received Kshs. 1300/- for lunch yet he had only been paid Kshs. 600/-. The handwriting and signatures were unknown to him.
69. The evidence of Enos Jilo Mwamba (PW 26) of Tudor Day School was that although he could not contest the payments reflected against his name, he was certain those entries were not made in his handwriting and corresponding signature did not belong to him after he was shown entry no. 2 in the registration/attendance list – P. exhibit 23 and Payment schedule for participants’ lunches- P. exhibit 24.
70. Patrick Chege Mwangi (PW 27) of Dzitsoni Secondary School left before he collected any money and asked his colleague Mathias Mwakule to pick for him if anything was to be paid but he never received any money from the colleague.
71. Others Officers like Eunice Mwalaa (PW 34), the Standards and Quality Assurance Officer Malindi testified they attended the workshop at Barani Secondary School in Malindi. She was not paid anything yet payment schedules showed she had received Kshs. 6000/-. She was only taken for lunch at a local hotel by Mrs. Chacha (2nd accused), Mr. Yugi (PW 4) and Susan Mbuvi from Mombasa DEO’s Office. She had been sent by Malindi DEO’s Office to go and assist the Headquarters Officers to conduct the workshop. The workshop took place from around 9.00 a.m. and ended at around 2.00 p.m. It was attended by about 40 participants.

She said:

“...There was a group of about 40 participants who were to be taken through the training. Workshop started at around 9.00 and ended at 2.00 P.M...”



72. Later during investigations, she was shown the payment schedule containing her name and personal details indicating she received Kshs. 6000/- computed at a rate of Kshs. 600 for ten days, yet she had not received that amount. She said:

“...I was not paid any money at all... Again, I was only with them for one day...”

73. Janet Abom Okello (PW 20) was based at Mombasa District Education Office as an Executive Officer and her evidence related to the work ticket- P. exhibit 21 for M/V G.K A905G. She stated that at the beginning of June, 2009 (to be exact, 7/6/2009 as confirmed during cross-examination) she filled details of the registration number of the vehicle, the name of the driver who was Omar Mwanyotta, the DEO' name and mileage from the previous ticket before issuing it to the driver. At the time she testified in court she said that the driver had died. She identified a copy of the said work ticket in court later produced as P. exhibit 21.

74. She testified that the vehicle was given out to Mrs. Yatich and other Officers from Ministry of Education Headquarters who had asked to use it.

75. After the vehicle was given out, the original work ticket was not returned to her at the end of that month as was the norm. She only came across a copy of it while being interviewed by EACC Officers on 8/1/2010. She was able to recognize the authorization made by her DEO for journeys between 7th to 13th June, 2009 only.

76. She also testified that she was aware that the fuel capacity of that particular vehicle was 100 litres yet when she checked the work ticket, she found that on 15/6/2009; 124 litres had been drawn. She said efforts to find the original work ticket did not materialize.

77. On cross-examination she was put to task on her assertion that the fuel capacity of the said vehicle was a hundred litres and pressed to justify the source of that information. She then explained:

“...I was told the capacity was 100 litres...Kike is the one who told me about capacity and also sometimes I would go to the Petrol Station with the driver to fuel. I do not remember the CC of the vehicle. I have no documentation to show the capacity of the vehicle. I do not know whether the vehicle has a reserve tank that can take a lot of fuel. I agree I have provided nothing in court that can show the capacity of the vehicle was 100 litres...”

78. Khalif Hussein Hirey (PW 35) confirmed that he was the District Education Mombasa and had given out the District Education Vehicle to facilitate movement of the Ministry Officials from the Headquarters who were carrying out duties within Mombasa Island.

79. Stephen Yego (PW 39) forensic document examiner produced the forensic document examination report dated 19/3/2010 - (P. exhibit 29) which had been prepared by his colleague Antipas Nyanjwa with whom he had worked with and was thus conversant with his signature.

80. According to that report, several documents were forwarded for examination via exhibit memo dated 24/2/2010- (P. exhibit 30) by the Investigating Officer, Mr. Tom Mboya (PW 41).

81. Upon examination, the document examiner made a number of key findings among them the following:

82. When the signatures identified with the red ink and appearing in imprest warrant (A1 produced as P. exhibit 3), the duplicate imprest warrant (A2 produced as P. exhibit 31), the payment voucher (A3 produced P. exhibit 4), payment schedule for coordination (A25 produced as P. exhibit 52), driver's per diem (A74 produced as P. exhibit 77) and the document acknowledging receipt of imprest



- to facilitate workshop dated 11/6/2009 (A77 produced as P. exhibit 80) were compared against the known signatures of Concelia Ondieki i.e. (B1 produced as P. exhibit 81) and her specimen signatures (G1 to G6 produced as - P. exhibit 187 a to f); the document examiner's opinion was that they were similar and indistinguishable.
83. He further examined and compared the handwritings on taxi-receipt dated 14/6/2009 (a Kenya Taxis and Car receipt no. 6079 for Kshs.1000/- then marked A5 but produced as P. exhibit 33), another taxi receipt dated 14/6/2009 (Kenya taxi receipt number 19534 for Kshs. 2000/- then marked A6 but produced as P. exhibit 34), cash sale receipt dated 15/6/2009 (from Warsame's Traders no. 56606 for Kshs. 9,176/- then marked A7 and produced in evidence as P. exhibit 35), cash sale receipt dated 23/6/2009 (from Warsame's Traders no. 56626 for Kshs. 9176/- then marked A8 and produced as P. exhibit 36), and cash sale receipt dated 21/6/2009 (from Warsame's Traders no. 56617 for Kshs. 7, 104/- produced as P. exhibit 37) and cash sale receipt dated 17/6/2009 (from Trans-Energy Kenya Limited no. 13164 for Kshs. 9, 176/- then A10 and produced in these proceedings as P. exhibit 38), cash sale receipt dated 22/06/ 2009 (from Malindi Service Station no. 119081 for Kshs. 9500/- then A11 and produced as P. exhibit 39) and the cash sale receipt dated 19/6/2009 (from National Oil no. 856456 for Kshs. 9, 163/- then A12 produced as P. exhibit 40). When compared he them with the standard handwritings of Mrs. Christine Chacha contained in documents marked C1 to C11, which are P. exhibits 82,83,84,85 86,87,88,89,90,91 and 92 in these proceedings, the finding of the document examiner was that those handwritings were similar and indistinguishable.
84. The handwriting in the receipt dated 20/6/09 in respect of mineral water for Kshs. 365, 625 (A23 later produced as P. exhibit 50) were compared with the standard handwritings of Christine Chacha contained in C1 to C11, later produced as P. exhibits 82, 83, 84,85, 86, 87, 88, 89, 90, 91, 92 and it was found the handwritings were similar and indistinguishable.
85. The document examiner was also asked to examine the handwritings in the document headed 'surrender summary' (then marked A4 but produced in evidence as P. 32), the cash receipt dated 20/6/2009- (which was receipt for assorted stationery for Kshs. 33,000/- then marked A14 but produced as P. exhibit 41), the cash receipt dated 21/6/2009- (another receipt for assorted stationery for Kshs. 33,000/-then marked A15 produced as P. exhibit 42), cash receipt dated 22/6/2009- (also receipt for assorted stationery for Kshs. 32,000/- then marked A16 and produced as P. exhibit 43), and a handwritten document written 'stationery allocated Kshs. 98,000/- amount spent Kshs. 98000/- balance 'nil'- (A17 produced as P. exhibit 44), receipt dated 20/6/2009- (receipt for hire for Kshs. 20,000/- then marked A18 and produced as P. exhibit 46), receipt dated 22/6/2009- (receipt for hire of computers for Kshs. 45,000/- then marked A19 produced as P. exhibit 46), receipt dated 24/6/09 (receipt for hire of computers and accessories for Kshs. 15,000/- A20 produced as P. exhibit 47), attached handwritten document written 'hire of computers and accessories- amount allocated 80,000/- spent Kshs. 80,000/- balance 'nil' which the document (A21 produced as P. exhibit 48), cash sale receipt dated 15/6/2009 which was attached to a handwritten document (receipt for production of assessment tools for Kshs. 5,556/- A22 both of which, the receipt and the written piece of paper were produced as P. exhibit 49 (i) & ii) examiner and a piece of paper written 'mineral water allocated Kshs. 365, 625/- spent 365, 625, balance 'nil'' (marked A24 and later produced as P. exhibit 51). When he compared the above documents with the standard handwritings of Christine Chacha that were contained in the documents marked C7 to C11, later produced in these proceedings as P. exhibits 88, 87, 88, 89, 90, 91 and 92; the document examiner's finding in his forensic report (P. exhibit 29) produced on his behalf by PW 39, was:

“...in my opinion I can find no agreement between the handwritings...”



86. The Court noted that PW 39, Mr. Stephen Yego who was presenting the report on behalf of Antipas Nyanjwa who authored the report had misled the court in regard to this particular finding in his oral account when he stated:
- “...request no. 5 to ascertain whether the handwriting on exhibit marked A14 to A24 were made by same hand when compared to specimen handwriting C7 to C11. Upon examination his opinion was handwritings are similar and indistinguishable...”
87. However, from the report itself, when the document examiner examined the questioned signature circled in pencil on the document written ‘receipt acknowledging imprest to facilitate workshop dated 11/6/09’ (then marked A77 but produced in evidence as P. exhibit 80) against the standard handwriting and signature of Christine Chacha in P. exhibit 82, 83, 84, 85 and 86, his finding was that there was no similarity between them.
88. Additionally, he examined and compared the questioned signatures indicated in red ink in the following documents: (duplicate imprest warrant no. 0520642 (then marked A2 but produced in evidence as P. exhibit 31) and found that there was no agreement between the signatures.
89. Specimen signature of Nzaro Gona Mackenzie (PW 6) was compared with the signature in P. exhibit 7- the payment schedule for officers at entry no. 9 of the schedule and it was found that there was no agreement between them.
90. Moses Bosire Ongera (PW 31) specimen signature- P. exhibit 104 was compared with entry no. 13 in P. exhibit 7- payment schedule for officers and no agreement between the two signatures was found.
91. Same result was arrived at upon comparison of the specimen signature of Eunice Mwalaa (PW 34) with that corresponding to entry no. 11 in P. exhibit 7 ‘payment for officers’ lunches’.
92. Hellen Navaliala Arunga (PW 19) specimen signature vis-vis entry no. 15 in the schedule ‘payment for officers’ lunches’ also did not match.
93. The same result was reached in respect of Nguma Harrison (PW 21) with regard to entry no. 8 of P. exhibit 6 (a)- ‘payment schedule for participants lunches : needs assessment in Coast Province held -17/6/2009; Cornelius Ndoloi (PW 15) in respect of entry number 13 in the payment for participants lunches – P. exhibit 6 (a); Price Sita Mbalu (PW 29) in respect of entry no. 12 in P. exhibit 24; Mulewa Safari Kata (PW 17) in respect of entry number 10 in P. exhibit 19; Dorothy Wanje Mulongo (PW 14) in respect of entry number 12 in P. exhibit 17; Mimar Omar Athman (PW 33) in respect to the signature in entry 1 in P. exhibit 18- registration/attendance list; Emmanuel Wara Mangi (PW 25) in respect of entry number 5 in P. exhibit 18- registration/attendance list, Chiwani Dominic (PW 11) in respect to the signature in entry number 5 of P. exhibit 13- registration/attendance list, Jane Kariuki Wambui (PW 37) in respect to the signature in entry number 2 of P. exhibit 15; Patrick Mwangi (PW 27) in respect to the signature in entry number 10 of P. exhibit 10 and also, the Beatrice Mwashu (PW 23) in respect to entry number 5 of P. exhibit 25.
94. In a nutshell the document examiner did not find any particular participant to have signed any of the documents were purportedly filled during the workshop and which the Prosecution exhibited in court described as registration/attendance lists, payment of lunches for officers and participants or transport reimbursement schedules.
95. During cross-examination, PW 39 was tasked to expound on the document examiner’s findings on P. exhibit 80, a document indicating acknowledgement of receipt of Kshs. 1,478,580/- from Acting



Director of Secondary Schools, Mrs. Concelia Ondieki by Christine Chacha to facilitate workshops. He explained:

“...As per the report, there were two requests to examine a signature circled in pencil purported to be for recipient against the specimen of Christine Chacha and two, signature purported to be of witness to be examined against signature of Mrs. Concelia Ondieki who signed as a witness and the person giving out the imprest.

Upon examination, it was the opinion of the examiner that indeed Mrs. Concelia Ondieki signed but recipient Christine Chacha did not sign...”

96. Jacob Oduor (PW 40), also a document examiner testified that he had ten years of experience in document examination. He told this Court on 31.8.2018, some documents were forwarded for forensic examination to the EACC Forensic Lab via exhibit memo- P. exhibit 189 (a). Those documents were:
97. copy of the imprest number 052642, then marked A2, but was produced in this case as P. exhibit 31; three payment schedules then marked A26, A28, A72, namely, payment schedule for officers’ lunches which was produced as P. exhibit 7 in these proceedings, payment schedule for participants’ lunches- P. exhibit 6 (a) and transport reimbursement for participants- P. exhibit 75. Also forwarded were two jet-link boarding passes then marked A75, produced in court as P. exhibit 78.
98. The above were to be examined against the specimen and also the known handwriting and signature of Concelia Ondieki, then marked GI-G3 and B1 respectively which was produced in court as P. exhibits 187 (a to f) and P. exhibit 81 respectively.
99. Upon scrutinizing the boarding passes (P. exhibit 78); the document examiner noticed evidence of erasure and alteration where the date was tampered with from 25th to 24th. Secondly, the two boarding passes were not serialized and were bearing similar handwriting on them which was similar to the known and specimen handwriting of Concelia Ondieki- P. exhibit (187 a to f) and P. exhibit 81.
100. In regard to the handwriting that had been circled in pencil on imprest warrant- P. exhibit 31; compared to the handwriting in P. exhibit 81 and P. exhibit 187 (a to f), which were samples of known and specimen handwriting and signature of Concelia Ondieki, the document examiner’s finding was that it was made by the same hand.
101. In regard to the handwriting on the payment schedules, namely: payment schedule for officers’ lunches- P. exhibit 7 I; payment schedule for participants’ lunches- P. exhibit 6 (a) and transport reimbursement for participants- P. exhibit 75; when compared to the known handwriting and specimen signature of Concelia Ondieki, that is, P. exhibit 81 and P. exhibit 187 (a to f) respectively, the document examiner’s opinion was that those writings had been made by one hand.
102. The investigating officer, Mr. Tom Gerald Mboya (PW 41), told this Court that the Head of Forensic Investigation Division, Mr. Henry Mwithia assigned him to investigate an allegation of misappropriation of imprest of Kshs 1, 478,581.00 on 15/12/2009. The nature of allegation was that fictitious documents had been used in accounting for the imprest.
103. He was assisted by a fellow investigator, Abdi Salat. They visited the Ministry of Education and collected various documents that were relevant to the investigation.
104. Among these documents was the imprest warrant for the imprest in question i.e. imprest warrant number 0520642 dated 10/6/2009 for Kshs. 1, 478,581.00/- (P. exhibit 3) that reflected the name of



the applicant as Martin Orwa (PW 1). He thus interviewed the said Martin Orwa (PW 1) and got the following information:

“...upon interviewing Orwa, we confirmed that indeed he had been scheduled to coordinate workshops in the Coastal region but due to other commitments, he requested his boss, Mrs. Concelia Ondieki who was then Acting Director of Secondary Education to collect the imprest and give somebody else on his behalf...”

105. That is why Ms. Christine Chacha (2nd accused), a Senior Education Officer was chosen to travel to the Coast region assisted by Richard Yugi (PW 4), a clerical officer at the Ministry.
106. Among the documents he retrieved included a surrender summary- P. exhibit 32 where expenditure in respect of the said imprest had been as follows: Per diem which was Kshs. 50,000/- spent fully. Driver's per diem was Kshs. 100,000/-; Kshs. 90,00/- out of that amount was reflected as having been spent. Participants' lunches, tea, snacks and hall hire was allocated Kshs. 297,000. Kshs. 294,600/- was shown as having been spent. Mineral water was allocated Kshs. 365,625/-; the whole amount was spent. Computer and accessories- was allocated Kshs. 80,000/-; the whole amount was spent. Stationery was allocated Kshs. 98,000/-; the whole amount was spent. Coordination was allocated Kshs. 40,000/-; the entire amount utilized. Production of assessment tools-allocated Kshs. 5,556.00/- the whole amount spent. Lunch for field Officers was allocated Kshs. 90,000/-; entire amount spent. Transport reimbursement Kshs. 292,500/-; Kshs. 290,700/- spent. Fuel for local running allocated Kshs. 60,000/-; Kshs. 56,380/- spent.
107. Thus from a total imprest of Kshs. 1,478,581.00/-, the unspent balance was Kshs. 7,892 which was paid to the Ministry under receipt number A3340616 in the name of Martin Orwa as the person who had surrendered the balance, although the receipt captured Kshs. 7,792/- instead of Kshs. 7,892/- as reflected in the surrender summary as the balance.
108. He thereafter widened the scope of the investigation beyond the documents by travelling to the Coast region to interview several people who had been reflected as having attended the infrastructure needs workshop that was held at both Coast Girls Mombasa and Barani Secondary School in Malindi in the month of June, 2009 and were allegedly paid.
109. He interviewed the Standards and Quality Assurance Officers, Heads of Schools, the driver from Mombasa Education Office who had been assigned to drive the Ministry Officers from the headquarters during the workshop. He also interviewed an officer from Mombasa District Education Office and the then District Education Officer, Mombasa,
110. Out of a list of 15 Standard and Quality Assurance Officers who had been shown to have attended the workshops, the investigation found that only 9 had attended and even those nine, they denied receiving the respective amounts of money shown against their names. They similarly disowned the signatures in the payment schedule- P. exhibit 7. The schedule indicated that each of the said Standards and Quality Assurance Officers received Kshs. 6000/- all totaling to Kshs. 90,000/-. He took their specimen signatures and subjected the same to document examination and the document examiner's report confirmed that the signatures did not belong to them.
111. Concerning a receipt for Kshs. 365,625/- for mineral water and other receipts for computer accessories, he stated:

“...The expense for mineral water was Kshs. 365, 625/-... There was receipt for mineral water receipt (in reference to P. exhibit 50) from Sharif Stationery & General Supplies P.O. Box



14678 Mombasa dated 20/6/2009 serial number 00455 for the amount of Kshs. 365,725/- ...”

“...Next item was Computer accessories which was allocated Kshs. 80,000/-... There were receipts to support the expenditure from a Company called Millennium Computer Accessories Limited (in ref. to P. exhibit 45 dated 20/6/2009 for Kshs. 20,000, P. exhibit 46 dated 22/6/09 for Kshs. 45,000/- & P. exhibit 47 dated 24/6/09 for Kshs. 15,000/-) ... We looked for this particular supplier to interview we could not trace him in Mombasa Town. The three receipts are peculiar because they have the same serial number and different amounts although issued on different dates by same supplier...”

112 In respect of the stationery expenses, he testified that it was supported by the following three receipts issued by Sheriff Stationers & Supplies- P. exhibit 41 dated 20/6/2009 for Kshs. 33,000/-; P. exhibit 42- dated 21/6/2009 for Kshs. 33,000/- and P. exhibit 43 dated 22/6/2009 for Kshs. 32,000/- which peculiarly bore the same serial number 00455 despite being issued on different dates too. He explained:

“...We could not trace the owners of Sheriff Stationers in Mombasa Town...Further, the three receipts had same serial number although on different dates and serial number was 00455...”

113 Then there was Coordination which had Kshs. 40,000/- of which the entire amount was used. He stated:

“...We managed to get the schedule titled payment schedule for coordination (in ref. to P. exhibit 52 dated 25/6/2009). It has 5 names, Martin Orwa allegedly paid Kshs. 8000/- for four days at rate of Kshs. 8000 per day. The signature against his name was confirmed not to be his but for 1st accused, Mrs. Ondieki...”

Concerning driver’s per diem he testified:

“...the other item was driver’s per diem of Kshs. 100,000/- and allegedly Kshs. 90,000/- was spent. There was only one driver by the name Omar Mwanyota. He was an employee of Mombasa District Education Office...the driver passed on before we got a chance to bring him before the court to testify. However, his signature on the schedule titled driver’s per diem was subjected to document examination and was found to be a forgery (P. exhibit 76) ...We had collected specimen signatures of Mwanyotta when we interviewed him...”

114 In regard to fuel receipts for the fuel drawn by the vehicle that was being used by the Headquarter officers for movement within the Coast region at the time of the workshops, they were from the following oil Petrol Stations: Warsame’s Traders, Trans-Energy (K) Ltd, Malindi Service Station and National Oil. Those from Warsame Traders were P. exhibit 36, 35 & 37 of which P. exhibit 35, S/No. 56606 of 15/6/09 was for Kshs. 9,176 for 124 litres of fuel as well as P. exhibit 36, S/no. 56626 of 23/6/2009 for Kshs. 9,176 also 124 litres. P. exhibit 37-S/no. 56617 of 21/6/2009 was for 96 litres of fuel. Trans-energy –P. exhibit 38 S.no. 13184 of 17/6/2009 was for Kshs. 9,176 also 124 litres and for Malindi Service Station- P. exhibit 39, S/no. 119081 of 22/6/2009 was for Kshs. 9500/- for 125 litres. Final fuel receipt was from National Oil, P. exhibit 40, s/no. 356456 of 19/6/2009 for Kshs. 9, 163 for 124 litres.

115 Testifying as to findings of his investigation in regard to the fuel receipts, he stated:

“...One strange thing about the receipts is that some of them indicate amounts as much as 124 litres which we interviewed the Education Officer at District Education Office, she indicated



their vehicle could not take more than 100 litres. The receipts were also attached to the surrender summary...”

In his further testimony on the same he added:

“...We interviewed the attendants in these petrol stations. Some indicated receipts were not genuine whereas in others, amounts in their records varied with amounts in these receipts...”

116 There were also two jet-link boarding passes that were filled by hand in the name of M. Orwa one dated 14/6/2009 where destination was indicated as Mombasa- P. exhibit 78 and a 2nd boarding pass in which destination was Nairobi. They too subjected to document examination against the handwriting of Christine Chacha and Mrs. Concelia Ondieki which the document examiner formed the opinion that it was the handwriting of Mrs. Ondieki.

With regard to transport reimbursement, he explained:

“...Last one is transport reimbursement for Kshs. 292,500/- allocated amount spent is indicated Kshs. 290,700 and the expenditure is supported by payment schedules which I stated we managed to trace some of these participants and they disputed having been paid the amounts and signatures confirmed to be forgeries... (in ref. to P. exhibit 68, 69, 20, 17, 70, 71, 14, 72, 73, 16, 73, 10, 25, 27, 74, & 75) ...according to these schedules participants were paid varying amounts as transport reimbursement. We sampled a few participants from each schedule. Some confirmed they attended workshops but no transport was reimbursed. We subjected signatures of participants we interviewed to document examination and the signatures were found to be forgeries...”

He went on:

“...We interviewed Richard Yugi (in ref. to PW 4) who accompanied Mrs. Christine Chacha to Mombasa to assist her and he confirmed to us that he assisted to register the participants in a foolscap ruled paper and when he came back, Mrs. Christine Chacha instructed him to transfer the names to transport reimbursement schedules and that the amounts for reimbursement had not been inserted. He filled the names minus the amounts. Further we subjected the reimbursement schedules for document examination which confirmed that the dates on the schedules had been written by Mrs. Ondieki (1st accused) ...”

He continued:

“...I wish to add that attendance list was subjected to document examination and the dates on the list were confirmed authored by Mrs. Ondieki...”

In regard to payment of lunches for participants’ schedules (that is, P. exhibit 54, 55, 28, 6 b (i) & (ii), 24, 12, 56, 57, 19, 8, 58, 22, & 59) ...we summoned a few participants, interviewed them and took their signatures for examination and signatures were found to be forged. The date on the schedules was examined by document examiner and found to be authored by Mrs. Ondieki...”

117 In the course of the investigations, the Investigating Officer also came across a copy of a document dated 11/6/2009, which was written as follows:

“...I Christine Chacha of Directorate of Secondary & Tertiary Education Ministry Headquarters has received Kshs. 1,478.586/- only from Acting Director Secondary &



Tertiary Education Mrs. Concelia Ondieki to facilitate workshops in Mombasa on infrastructure needs assessment...”

118 There were two signatures one of the receiver and Mrs. Ondieki who had signed as a witness. She was thus invited to go confirm the authenticity of the document because it was a copy and she confirmed on 15/2/2010.

119 The document was then subjected to document examination and the signature that certified as well as that was in the one which was in the document signed as the witness was found to match with that of Mrs. Concelia Ondieki.

120. On cross-examination by Mr. Omuga for the 2nd accused, Counsel asked the witness to explain the finding of the document examiner in regard to the document detailing the acknowledgement of the imprest of Kshs. 1, 478, 386 (P. exhibit 80) in regard to signature of Mrs. Christine Chacha on that document, he replied:

“...It purports to show Christine Chacha received from Mrs. Ondieki 1, 478, 586/-. It was examined by document examiner and Mrs. Chacha’s signature was found to be forgery. She denied receiving the money...”

121. Asked to explain if it was the obligation of Mrs. Chacha to account for the imprest, he stated that although it was not Mrs. Chacha that was surrendering the imprest, she provided documents which were used to surrender the imprest as confirmed through the document examiner.

122. Challenged by Counsel to pin-point the documents that implicated Mrs. Chacha; he mentioned P. exhibit 50- receipt dated 20/6/2009 S/no. 0455 for mineral water from Sherif Stationers for Kshs. 365,625.00.

123. Asked explain count three which was pegged against a receipt of Warsame Traders dated 16/6/2009; he explained:

“...The issue is that the receipt should have been filled by Petrol Station attendant. We confirmed the author of the receipt was the accused...same evidence as others-that is, it was not filled by the attendant but by the accused...”

124. He stated that same happened in respect to the receipt from Trans-Energy (K) Ltd- of 17/6/2007 P. exhibit 38 and the receipt from Malindi Service Station of 22/6/2009- P. exhibit 39.

125. It was put to the Investigating Officer (PW 41) by Counsel that some participants had confirmed having been paid money and the only contentious issue was on the exact amount paid to them, hence not all money was lost, to which he replied:

“...We did not establish exact amount because we did not get each person allegedly paid. We could not establish the exact amount lost...”

126. Both accused elected to give unsworn evidence in their defence with the 1st accused calling one witness in support of her defence.

127. The 1st accused, Concelia Aoko Ondieki stated that she was the Acting Director for Secondary and Tertiary Education at the Ministry of Education at the material time. She further told this court that she did not take any imprest relating to infrastructure needs assessment workshop which is the subject matter of this case. Her defence was that her department had many other activities it was implementing at the time and the imprest she took related to facilitation of a different activity, namely, provincial



sensitization workshop/capacity building on secondary schools and that is the imprest she took for Nyanza and Western and accounted for.

128. She explained that a number of activities for the year 2008/2009 work-plan from the Secondary Section had been approved by the then Permanent Secretary, Prof. Karega Mutahi to take place up to 29/6/2009 so as to facilitate surrender of imprests by the close of financial year on 30/6/2009.

Among the activities to be undertaken were:

· Provincial sensitization/Capacity building workshops· Double shift sensitization workshops for secondary schools· Provincial/Regional Capacity Workshops on Management of Instructional Materials for Secondary Schools Phase II· Infrastructure needs assessment workshop for secondary schools among others.

129. In the Department of Tertiary and Secondary Education, there a total of 31 activities and an officer was identified and assigned to take imprest for a particular activity.

130. The activity for which she took an imprest of Kshs. 5,500.300 to individually undertake its implementation was the provincial sensitization/capacity building workshop under imprest warrant number 0520636 dated 9.6.2009.

131. She stated part of conditions for management of imprest is that an imprest holder must not have any other outstanding imprest to qualify for issuance of imprest. She had fulfilled all the condition, received and acknowledged receipt of the imprest on 10/6/2009 and proceeded to undertake her activity from 12/6/2009. She thus explained:

“...I therefore state that this was the only imprest I took and duly surrendered on 30/6/2009 in that particular financial year 2008-2009. This was done via surrender voucher also known as payment voucher 011748 dated 30/6/2009. I also attached the summary of the said expenditure to that...”

132. In respect of the imprest which is the subject matter of this case, she explained her involvement as follows:

“...I was informed by Accounts Department by one Mr. George Ayah that amongst the applicants; one Mr. Martin Orwa had not signed his imprest like all others...This was to facilitate the workshop on infrastructure needs assessment. I was tasked to look for him because he was an officer working under me. I found it was the only officer who was not on duty that particular morning despite the fact that as his supervisor, I was not aware of his absence from duty that particular day. I called George Ayah and informed him I did not know the whereabouts of Martin Orwa. Since I had not given him any permission to be away and he had not informed me that he would be away. Mr. George Ayah informed me that for the process to continue because it was holding all the other imprests, I as the Head of Department could sign to facilitate movement and process of all the other workshops to enable the disbursement but could not pick for him his imprest...”

133. She stated that the reason as to why she was informed she could not pick the imprest for Martin Orwa despite having signed for him for disbursement was partly because she had taken another imprest already and also the fact that one had to get the authority of the Permanent Secretary to pick an



imprest on behalf of another person because only an imprest holder should receive the imprest. She thus asserted:

“...I did not pick the imprest related to this case...”

134. She further stated when the activities were completed, Internal Audit compiled a report on in-depth risk based fiduciary review for Kenya Education Support Programme (KESSUP) whereby it raised queries relating to validated imprest accountability issues for imprests taken in the year 2008-2009 and recommended managerial action in respect of 31 Officers who had been issued with imprest, 1st accused included. She was listed as no. 1 in the said report and the imprest that was being queried was the one for Kshs. 5, 500,300/-.
135. In regard to the present case, it was no. 14 in the list for the amount of Kshs. 1, 478, 581 and the imprest holder being Martin Orwa.
136. Officers listed in the report appeared before the Validation Committee to explain the issues raised in the report and for her, she was invited to the Committee via a letter dated 11/11/2009 to answer queries in respect of her own imprest of Kshs. 5,500, 300/- which was to facilitate capacity building workshop in Nyanza and Western Provinces. Before she could even appear before the Committee, she was suspended on 23/9/2009 on the allegation of fraudulent use of public funds amounting to Kshs. 5,500,300/-. Subsequently, she was charged in ACC 8/2010 on account of the said Kshs. 5,500,300/-. She stated:

“...At no given time during the whole of this period was I ever connected or queried on this particular imprest relating to this case nor received any letter relating to it, neither from the P.S. nor the auditor...In conclusion, I therefore affirm I had nothing to do with either the taking of this particular imprest in court in the name of Martin Orwa which was queried at no. 14 of the fiduciary report under Martin Orwa’s name. The only time I came into contact with this document i.e. imprest warrant and surrender from Martin Orwa was in my official capacity as Acting Director of Secondary & Tertiary Education...”

137. George Oyaro Ayah (DW 1) was called as a witness by the 1st accused, Mrs. Concelia Ondieki. He testified that he is an accountant by profession and produced his certificate of registration as a certified accountant no. 5790 dated 16/10/2008 as D. Exhibit 1. He told the Court that he worked at the Ministry of Education from 2005 until 2010 when he was moved to the Office of the President. He produced his promotion letter dated 23/9/2010 to the position of Principal Accountant during his stint at the Ministry of Education- D. exhibit 5.
138. At the time of his retirement, he had been seconded to Kiambu County as Director of Finance. He retired on 23/3/2015. He however continued serving on contract in Kiambu County until 1/11/2017 when he left. He produced the certificate of retirement dated 23/2/2015- D. exhibit 5 and a letter of appointment dated 25/5/2016 by Kiambu County as D. exhibit 2.
139. He testified that at the time the imprest in question was processed, he was at the Ministry of Education where he was deputizing the Head of Accounts and was quite conversant with the applicable procedures. He testified that under normal circumstances, the regulations require that the imprest holder should sign the imprest. In reference to P. exhibit 3, which was signed ‘for’ and in which the applicant was indicated to be Martin Orwa, he explained:

“...I can see a signature here, marked ‘for’ meaning it was not signed by Martin Orwa but someone else. I recall this time, I was deputizing the Head of Accounting Unit and there was



a general requirement for imprests and this is one of the officers who applied for the same. I was familiar with the procedures...I am familiar with this particular signature. It was for Director of Higher education i.e. Concelia Ondieki. The imprest holder, the person whose name is recorded as applicant had not signed this warrant when it came to imprest section. I do recall when the imprest accountant who was under me came to my office and told me that she had a batch of imprests for Department of Higher Education which required urgent processing but one of them had not been signed by the applicant and was delaying the processing of others because they were all attached to one copy of approved budget. The urgency of this particular imprest was that they had to go and collect data and since it was June, all imprest had to be surrendered by 30th June and delaying then would have denied them ample time for the activity and accountability. This was brought to my attention on 10/6/2009. The activities were to begin on 12/6/2009 which was a Monday. If it was not approved, the activities would have delayed...”

140. He then explained that when one signs such an imprest ‘for’ due to some special circumstances when the imprest holder is not available to sign, that person does not thereby become the imprest holder since the purpose is to facilitate the processing as per the approval. He thus stated:

“...When I got informed, I called the Acting Director of Secondary Education inquiring where Martin Orwa was. She told me she would get in touch with him. Later, she rung me informing me Martin Orwa was not around. That is when I asked her to sign on his behalf to enable the warrant to be processed. She signed ‘for’ Martin Orwa. After that the processing proceeded as issued...”

141. He testified further that only applicant i.e. the person who applied for the imprest that can take the imprest that is in his or her name and if the imprest holder is not available to take the imprest, but the activity is considered urgent, only the accounting officer can give that authority for someone else to pick that imprest. He then affirmed:

“...The warrant which is here, it is Martin Orwa who applied, it is I would say, Martin Orwa who received Kshs. 1, 478,000/- I see a surrender by Martin Orwa and cash received by cashier says, received from Martin Orwa. I base myself on the documentation before me...”

142. DW 1 was cross-examined at length by the Prosecutor, Miss Gitau. On cross-examination, he stated that at time he was a Chief Accountant then Deputizing the Principal Accountant. He was referred to imprest warrant- P. exhibit 3 and the voucher- P. exhibit 4 and asked if he personally dealt with any of those documents, to which he replied:

“...I did not personally handle...”

143. Asked therefore to say who actually surrendered P. exhibit 4, he answered:

“...There is a section in Accounting Unit called Imprest Surrender Section. They are clerks. Personally, I would not know who made P. exhibit 4 and surrendered it...”

144. He was then referred to imprest warrant, P. exhibit 3 which was in the name of Martin Orwa and was asked if he knew him to which responded in affirmative but not his signature.



145. He confirmed he knew Mrs. Concelia Ondieki and was in fact familiar with her signature. He was then referred to imprest warrant- P. exhibit 3 and said:

“...The signature is for Madam Concelia Ondieki, she signed ‘for’ in P. exhibit 3...”

He then explained:

“...When someone signs for, it means that at that time, the officer may not be there but officially has been allocated these duties. The main purpose of that is that is to have the imprest warrant processed, move within different offices...”

146. He was then asked if the applicant signs anywhere when the warrant goes through and receives all the necessary approvals for money to be released, he replied:

“...Yes, they sign on receiving the money, at section 6 of the imprest warrant...”

147. Ms. Gitau then probed him on whether he could recognize the signature in section 6 of P. exhibit 3, he responded:

“...I am familiar with that signature, this signature is for Concelia Ondieki who was the Director, and again in this section, she has just signed. She has not signed ‘for’ in this section of the imprest warrant...”

148. The witness was then requested to read the exact wording of the said part 6 of the imprest warrant which he read out as follows:

“...I acknowledge receipt of an imprest of Kshs. 1, 478,581 which I undertake to account for in full on or before 19/6/2009. In the event of failure to return the imprest within 48 hours, following return from official duty, the Accounting Officer, Ministry of Education will recover the amount in full from my salary in addition to any other action that may be preferred against me.’ Ms. Ondieki signed that...”

He then added:

“...From this document, the person who received the money is the person who signed the document...”

149. Asked if he had evidence that Mrs. Concelia Ondieki gave the money to Martin Orwa, he stated he did not have any.

150. The 2nd accused, Mrs. Christine Wegesa Chacha also gave an unsworn statement of defence from the dock.

151. She began by stating firmly that she knew nothing about the sum of Kshs. 1, 478,581/- which is the subject matter of this case further adding as follows:

“...I was not involved in budgeting for that money, in the application of that imprest and even the surrender of that imprest. I came to know about that money in 2009 when I was called to the Integrity House by an Officer called Tom Mboya. He showed me the letter that was said to have originated from me and the letter is in court- P. exhibit80 which stated “I Christine



Chacha acknowledge receipt of Kshs. 1, 478, 581 from Concelia Ondieki...I actually denied that letter because I did not know the origin...”

152. She went further to state that in June, 2009; her Director, Mrs. Concelia Ondieki (1st accused) called her to her office. It was between 3.00-4.00 p.m. She then informed her that there was an exercise that was to be carried out in the Coast Region to evaluate so as ascertain the availability and adequacy of facilities as the Ministry was launching a double shift programme in some selected Secondary Schools. The 2nd accused had done that assignment in the Coast before and was still doing the exercise in Coast region. She thus did not have any objection; she just went back and went on with the exercise.
153. However, before she left, the 1st accused gave her Kshs. 400,000/- which she acknowledged receipt on a yellow piece of paper and left it with her. She stated that she never knew that this money was part of an imprest applied in the name of Martin Orwa. She told her that the procurement office had also procured the air tickets to fly to the destination.
154. Since the exercise entailed distribution of questionnaires, the holding of seminars to sensitize education stakeholders such as Principals, Chairmen of Boards of Management and Chairmen of PTAs’, Mrs. Ondieki informed her that she would get another officer to accompany her.
155. After she left the 1st accused’s office, she decided to take the lift to the procurement office which was on the ground floor to collect her air ticket. On the 7th Floor, she heard the voice of a man wondering where Mrs. Chacha office was and before she took the lift she encountered the man. The Secretary pointed her to the man, and told him ‘that is Mrs. Chacha’. He then introduced himself to the 2nd accused as Mr. Richard Yugi from the Human Resource Management Section.
156. He told her he had been appointed by Director, Secondary & Tertiary Education, Mrs. Ondieki to accompany the 2nd accused to the Coast Region and he was actually holding his air ticket which he had picked from the procurement office. They then agreed to leave for Coast region on Sunday, the 14th June, 2009. They met at Jogoo House and boarded a taxi to JKIA. The 2nd accused paid for the taxi.
157. They flew by Kenya Airways flight to Mombasa. They were issued boarding passes. Upon landing, they took another taxi to different hotels, the 2nd accused paid for taxi service.
158. The following day, the 15th of June, 2009 they met at the PDE’s office but the Office had not been opened so they were directed to the DEO’s Office where they met the Executive Officer, whose name she could not recall.
159. He requested the Officer to assist them with a vehicle and an Officer to guide them within the region. She was told there was a vehicle but had no fuel and the officer who was on duty, Susan Mbuvi had not arrived.
160. She assured her there was money for the fuel and also driver’s subsistence. The driver’s name was Mwanyotta. She gave Kshs. 10,000/- to the driver to go and fuel the vehicle. Mr. Yugi excused himself to accompany the driver. She was left behind in the office sorting out other logistics.
161. They were to commence with the teachers at Mombasa Polytechnic. They drove their and found a group of teachers assembled together with BOM and PTAs’ Chairmen. Mr. Yugi had carried a few questionnaires. She gave him money to go and do photocopies since the number was bigger than expected. She explained Mr. Richard Yugi’s role as follows:

“...We agreed he would be in charge of registration of participants, distribution of questionnaires, arranging the participants in various groups as per Districts, and assisting in some purchases that were required and also reimbursing participants money especially



transport and lunches in places we did not take lunch and purchase of mineral water for participants...”

162. On her part, she oversaw the introduction of the participants and guided them on how to fill the questionnaire. When the session ended is when she was informed there was an officer outside the hall who wanted to see her. She went to meet the officer who introduced herself as Susan Mbuvi from Mombasa District Education Office and that she had been asked to accompany them.
163. They thus assigned her the work of assisting Mr. Yugi in distribution of questionnaires, making payments and doing the purchases required in the seminar.
164. After the workshop at Mombasa Polytechnic, the next two days they crisscrossed Mombasa District. They visited several schools taking photographs of existing structures and ascertaining if the schools were capable of accommodating double in-take.
165. After the two days, the DEO’s Office assisted them to convene another common venue at Coast Girls where they invited more participants. After this workshop, they again went out for two days visiting other schools. They were using the DEO’s vehicle which she was fueling.
166. The final venue was Barani Secondary School in Malindi. Just like in the other two workshops, they conducted the workshop and gave out the questionnaires. The participants filled them and photographed the existing facilities. That day, another officer from Malindi whose name was Mwalaa had joined them and her role was similar to the one they had assigned the officer from Mombasa DEO’s office. The accused work was to guide the participants in filling the questionnaire whereas the officer, Mwala and Mr. Yugi did transport reimbursement and lunches. She said that a common amount had been agreed.
167. Mwala had suggested that the officers should have a common lunch and she organized for one. The accused gave her the money to organize for the lunch.
168. She confirmed that throughout the entire exercise, they were using the Mombasa DEO’s vehicle, a Pajero registration number GKA 905 G and the driver’s name was Mwanyotta. She maintained that the original work ticket was filled properly and took a photocopy of showing the details of the fueling.
169. Her testimony therefore was that it was Yugi who did the registration, payments and other purchases assisted by Madam Mwala and Susan Mbuvi of Malindi and Mombasa Education Office respectively. She refuted the suggestions by Mr. Yugi that she instructed him to transfer the names that were on one piece of paper to another. She said:

“...The allegation by Mr. Yugi that I instructed him to transfer the names from one paper to another is a total lie. I did not do that and I could not do that because he was in charge of payments and registration. He wanted to save his skin, he feared he could be charged with the charge I am facing...”

170. Concerning the Kshs. 400,000/- she was given she stated that although she was not told where it had come from, she carried the exercise as instructed for ten days and used the total sum of money given to her on the following items: Per diems· Refund of lunches and transport for participants· Fueling the car they were using· Buying stationery and photocopying questionnaires and other materials required



171. She further stated some of the documents she submitted when she returned from Mombasa were not the ones before the court. She clarified:

“...Last but not least, some of documents I gave when I came from Mombasa are not before this court. Typical example is KQ boarding passes, and what I have been seeing like attendance and registration list in general, not related to this exercise. For that reason, I say the money I was given was not part of imprest forming part of this case. Most of the documents I gave are not here. The fueling of the car, is only one instance I gave the money to driver, that is, 15/6/2009. The rest of the days, he was fueling in my presence with money I was giving him. To summarize, I knew nothing about the 1, 478,581 that had been applied by Martin Orwa. That is all I have to state...”

172. I have read carefully the written submissions by both the defence and the Prosecution in this case. I do not wish to reproduce the said submissions in this judgement save to say that I shall be making references to the said submissions as I consider various issues that arise for determination in this case.

173. Reading through the entire case, it is evident that this case is founded on an imprest of Kshs. 1, 478, 581/- that was issued by the Ministry of Education pursuant to warrant number 0520642- P. exhibit 3 for purposes of facilitating the infrastructure needs assessment activity.

174. It is also indisputable that the budget for the activity was submitted and expenditure therein approved. This was confirmed by the Permanent Secretary and the Ministry’s Accounting Officer, Professor Edward Karega Mutahi (PW 7) who confirmed that he received the memo forwarding the budget- P. exhibit 1 and approved the request. The Principal Accountant at the Ministry at the time, Lucy Nyaguthi Kinyua (PW 5) also testified she approved the imprest warrant relating to infrastructure needs. Procedurally therefore, there was nothing wrong with the money being spent to undertake the activity on infrastructure needs, as long as the expenditure was validly incurred; the issue therefore is how the money approved for utilization of this activity was spent and accounted for and by who.

175. In regard to count 1 which is an offence of false accounting by a public officers contrary to section 331 (1) as read with section 332 (2) of the Penal Code, the Prosecution is required to prove that the accused are public officers charged with receipt, custody or management of public revenue who knowingly furnished false statement or return of money entrusted to them. The key elements for this offence therefore are:

- i) prove that the accused are public officers
- ii) prove that the said Kshs. 1, 478, 581 was public property;
- iii) Evidence the money was placed under the custody of the accused and that they had a duty over the management of the said Kshs. 1,478, 581/- or any part thereof?
- iv) Prove that there was false return made in connection with the said money;
- v) If so, that it is the accused who knowingly furnished the said false return

176. The 1st issue on whether the accused are public officers is not in contention. They were public officers working in the Ministry of Education and this fact was confirmed in their own statements of defence before this court.

177. The 2nd issue is whether the money in question, Kshs. 1, 478, 581 was public property. From the evidence of Prof. Edward Karega Mutahi (PW 7), the Permanent Secretary/Accounting Officer in the Ministry of Education; the budget for the activity was to be drawn from the Ministry funds which was



- submitted to him via P. exhibit 1 and authorized. The fact that the money came from the Ministry was also confirmed by the Principal Accountant of the Ministry- PW 5, Lucy Wanjiku Kinyua, who testified that the said Kshs. 1, 478, 581 was processed from the Ministry funds under the imprest warrant- no. 0520642-P. exhibit 3.
178. There is no other evidence to suggest that money under the said imprest was from any other source; I thus find that the money in question, Kshs. 1, 478, 581/- belonged to the Ministry of Education hence it is/was public funds and thus public property.
179. The 3rd issue is whether that money which was in respect of the imprest in question was in the custody of the accused and thus had a duty over management of the same.
180. The 1st accused denied in her statement of defence that she received the money in question. She explained that all that she did was to sign the imprest warrant no. 0520642-P. exhibit 3 on behalf of Martin Orwa when it transpired that Mr. Orwa's whereabouts that morning were unknown and he had not sought permission from her as his superior. His absence meant he was holding the processing of all the other imprests relating to the activity as they were all together. There was also great urgency considering implementation was taking place towards the end of the financial year. She also added that she acted that way on the advice of DW 1, George Ayah who was the Deputy Accountant and who informed her that as the Head of Department, she could sign for him to unlock the processing of the rest of the imprests hence she signed "for" in the said imprest warrant. She was emphatic that she did not receive the money under the imprest number 0520642 because she was not the imprest holder. Moreover, she said that would not have been possible because at the time, she was also holding her own imprest of Kshs. 5, 500, 300/- which she had taken on 9/6/2009 to facilitate provincial capacity building workshop in Nyanza and Western under imprest no. 0526636 and thus it would not have been in breach of imprest regulations to take two imprests.
181. Indeed, DW 1- George Ayah who was called by the 1st accused as her witness confirmed he was the one who gave her the advice to sign for Martin Orwa's imprest warrant purely for purposes of facilitating the processing but not to receive the imprest money because only the imprest holder could receive and account for the money, further, because she was also holding the other imprest she could not have taken another one.
182. Mr. Omuga, the Advocate for the 1st accused also submitted along this line as follows:
- “ ... DW 1, Senior Accountant George Oyaro Haya, laid out the circumstances under which the 1st accused signed the imprest warrant for Martin Orwa, the imprest holder, that Mr. Orwa was not available which was delaying the processing of imprest warrant...DW 1 was categorical that no one other than an imprest holder can receive money under an imprest warrant without written authority of the imprest holder...”
183. The 1st accused defence position as well as submissions however sharply contrasts with the evidence presented by the witnesses for the Prosecution.
184. Martin Orwa (PW 1) who is the person named in the imprest warrant no. 0520642-P. exhibit 3 as the applicant was firm that although he was initially slated to take the imprest, he neither signed the application for that imprest nor did he receive the money which was under that imprest warrant- P. exhibit 3. That when he realized it was not going to be possible for him to personally undertake the activity, he informed his Director who is the 1st accused and requested her to replace him with someone else to take up that assignment. That he subsequently wrote a memo- P. exhibit 5 and his Director, the



1st accused, Mrs. Concelia Ondieki was the one who picked the said imprest since he was away from the office.

185. The other witness was Elias Kimani Macharia (PW 3), the cashier at the Ministry of Education who testified his work involved making payments in respect of processed vouchers. He confirmed that the imprest warrant number- 0520642- P. exhibit 3 was in the name of Martin Orwa, but the person he actually made payment to was Mrs. Concelia Ondieki, the 1st accused. He said:

“...I paid the money to Concelia Ondieki. She did not have the letter of authority but she brought it to me later after I had paid...”

He further stated:

“...Concelia duly signed and gave her identity card no. 9290778. I paid the imprest in cash to Concelia...”

186. Afterwards, the Principal Accountant queried him on why he had the paid Mrs. Concelia Ondieki. He thus attached in his response a letter from Martin Orwa- P. exhibit 5 indicating Orwa was out of office and hence payment should be made to the 1st accused, Concelia Ondieki.
187. Despite DW1- George Ayah’s initial stand in his examination in chief that Mrs. Concelia Ondieki could not have collected the imprest of Kshs. 1, 478, 581/- under imprest warrant number 0520642 (P. exhibit 3) because the advice he had given her was to only sign in order to facilitate the processing of the imprest and not to receive the money which could only be received by the imprest holder; when he was cross-examined by the Prosecutor, Ms. Ann Gitau, Mr. Goerge Ayah, confirmed the imprest warrant had the part 6 which is where the recipient of the money signs to acknowledge the receipt of the money under an imprest warrant. When he was shown the imprest no. 0520642- P. exhibit 3 which is the subject of these proceedings and taken to this part, he looked at the signature appearing in that section and confirmed the details as follows:

“...Yes, they sign on receiving the money, at section 6 of the imprest warrant...I am familiar with that signature, this is the signature for Concelia Ondieki who was the Director, and again in this section, she has just signed, she has not signed ‘for’ in this section of the imprest warrant...From this document, the person who received the money is the person who signed the document...”

188. The document examiner’s finding in the forensic document examination report- P. exhibit 29 was that the signature in the imprest warrant- P. exhibit 3 was indeed similar and indistinguishable when compared to the known and specimen signatures of Mrs. Concelia Ondieki, the 1st accused herein.
189. It is this court’s finding that the 1st accused’s denial that Kshs. 1, 478, 581/- under imprest warrant number 0520642- P. exhibit 3 was not given to her is effectively displaced by the avalanche of the strong and credible oral as well as documentary and expert evidence presented by the prosecution in this case. Evidence has established that the money that was meant for infrastructure needs assessment activity by the Ministry of Education in Coast region amounting to Kshs. 1, 478, 581/- was placed under her custody and not on the person of Mr. Martin Orwa whose name was reflecting in the imprest warrant- no. 0520642- P. exhibit 3.
190. Having picked the money, Kshs. 1, 478, 581/- as demonstrated by the evidence, it means the 1st accused by implication substituted Martin Orwa and in reality assumed the role of the imprest holder though not procedurally as since she did not seek the concurrence and authority of the accounting officer as per



- evidence of PW 1, PW 5 and DW 1- George Ayah before receiving the money. However, she received the money under that imprest nonetheless; I thus find as a fact that she effectively became the person charged with the management of the said public funds that were now entrusted to her at the Ministry.
191. The 2nd limb of the determination in regard to issue no. 3 is whether the 2nd accused, Christine Wegesa Chacha, had role to play in the management of the said public funds or any part thereof for which she can be held accountable?
192. There was evidence that the 2nd accused was involved in the infrastructure needs activity in Coast the region. Did her role involve management of the money in question or any part thereof?
193. Part of the evidence provided by the Prosecution is by PW 4- Richard Ojuk Yugi who had been assigned by the 1st accused to accompany 2nd accused to conduct those workshops. He testified that it was Mrs. Chacha (the 2nd accused) who was reimbursing the participants transport allowances at the workshops.
194. There was also the evidence of Susan Mbuvi (PW 34) the officer from Mombasa DEO's office who had been assigned to assist the two Headquarter team members- Mr. Yugi and Christine Chacha. Her evidence was she was it is Christine Chacha (2nd accused) who paid her.
195. Furthermore, in her own statement of defence from the dock, the 2nd accused admitted that she actually received Kshs. 400,000/- from the 1st accused who was her Director and was thereafter dispatched to the Coast region to facilitate the infrastructure needs activity. However, according to her she could not tell the source of the said money that was given to her for she had not participated in the budgeting of this activity or applying for that imprest. She also explained how she spent that money indicating that she spent it on paying per diems, refund of lunches and transport for participants, fueling the car they were using, buying stationery, photocopying questionnaires and other materials required. Thereafter she surrendered all her documents relating to the expenditure but none of the documents she had submitted was among those that were exhibited before the court.
196. Her Advocate Mr. Amuga while submitting remarked:
- “...She had no knowledge as to the source of the money given by the 1st accused to facilitate the workshops. The money could have been part of the Kshs. 5,500,000/- which 1st accused stated in her statement to be the only imprest she took. But even if the money was part of Kshs. 1, 478, 581/=, the 2nd accused still could not be required to account for the money to anybody else, except 1st accused...”
197. She further disputed the testimony of Richard Ojuok Yugi (PW 4) that she was the one making the payments during the training. She insisted that they had agreed that it was Mr. Yugi and an Officer assigned to them from the DEO's office that were to take up that role. Hers was to take the participants through the questionnaires.
198. By her on admission before this Court, the 2nd accused was given Kshs. 400,000/- and instructed to proceed to go on official assignment relating to her work, namely to facilitate the infrastructure needs activity in Coast region by the 1st accused who was her Director. It was not a private assignment but official one where public funds were involved. The nature of work was related to her Department's activities so it was an assignment of a public nature.
199. It is thus misleading for counsel to argue that the money she admits she was given she could only account to the 1st accused and to no one else as if it was the 1st accused personal money. That money belonged to the Ministry of Education and she had a corresponding duty to demonstrate to the Ministry that the money was utilized properly and not just to satisfy the 1st accused only.



200. Having been handed over the money for an official undertaking by her superior, the duty to account for the money released to her and accepted by her for an official undertaking fell on her for that portion of the funds as a public officer.
201. In her own statement she said at the point she was called by the 1st accused in her office and given Kshs. 400,000/-; Mr. Yugi was not even there. Why then would she want to shift the responsibility to account for what given to her to exclusion of Mr. Yugi to Mr. Yugi by saying it was Mr. Yugi that was paying the participants and yet there is no evidence at all that she even handed the whole amount or part of the money she received to Mr. Yugi in order to administer during the workshops?
202. Moreover, she says she neither knew the source the money nor had she applied for that imprest hence she cannot be held accountable for the specific imprest in question because the 1st accused could have given her that money from any other source or imprest.
203. Her Advocate submits that the money might not even have been part of the imprest in question and could even have been part of the other imprest of Kshs. 5,500. 300/- that the 1st accused spoke about in her statement of defence.
204. That defence and counsel's submission cannot stand the weight of evidence on record. Already, evidence has established that the 1st accused was the one who actually picked the imprest for the infrastructure needs for the Coast region hence there cannot be any guessing or speculation as to where the Kshs. 400.000/- that 2nd accused admits was handed over to her for that activity came from. That money was part of the money the 1st accused had received, I find.

The 4th issue is whether a false return was made?

205. The 2nd accused in her statement of defence stated as follows concerning the documents she submitted relating to the money she had been given and used:

“...Last but not least, some of documents I gave when I came from Mombasa are not before this court. Typical example is KQ boarding passes, and what I have been seeing like attendance and registration list in general, not related to this exercise.... Most of the documents I gave are not here. The fueling of the car, is only one instance I gave the money to driver, that is, 15/6/2009. The rest of the days, he was fueling in my presence with money I was giving him...”
206. On her part 1st accused, did not address the issue of submission of any documents to account for that imprest because she maintained that she did not receive the imprest in question. However, this court has found that position by the 1st accused untruthful as there is clear and credible evidence on record which demonstrates that she was the one who received the money from the cashier.
207. For the Prosecution, evidence tendered on the issue of false return was multi-layered.
208. Firstly, many direct witnesses disputed the amounts in the payment schedules showing payments allegedly made to them during those workshop, they were firm that the amounts were inflated and the signatures and the handwritings on the said payment schedules as well as the attendance sheets did not belong to them. For instance, Absalom Odhiambo Ogeno (PW 32), the Standards and Quality Assurance Officer Mombasa, testified he attended the infrastructure needs assessment in June, 2009. He was paid Kshs. 200.- as transport reimbursement and signed for it. He was firm that he did not receive Kshs. 6000.- that was indicated against his name and other personal details in P. exhibit 7 ‘payment schedule for officers’ lunches’. Similar evidence was given by others namely



209. Kalume Juma Mathias, (PW 12), Dominic Chiwani (PW 11), Joash Momanyi (PW 13), Beatrice Afandi (PW 23), Paul Kamau Kibiru (PW 24), Emmanuel Mangi Wara (PW 25), Mulewa Safari Katana (PW 17), (PW 29) Price Sita Mbaru (PW 29), Mwambezi Ndune (PW 30), Mima Omar Athman (PW 33), Immanuel Mbaru Kombe (PW 38), Enos Jilo Mwamba (PW 26), Patrick Chege Mwangi (PW 27), and Eunice Mwalaa (PW 34).
210. There also those who did not attend the workshops yet there were payments indicated against their personal details. They also disowned the signatures in these schedules as well as the handwriting. Those included Nzalo Gona Mackenzie (PW 6) where an allowance of Kshs. 6000/- was indicated against his name in the Payment Schedule for Officers Lunch” – (P. exhibit 7). This category had Hellen Navaliala Aruga (PW 19), Moses Bosire Ongere (PW 31), Obadiah ngethe Ngugi (PW 10), Cornelius Ndoloi Mnene (PW 15), Dorothy Mulongo Wanje (PW 14), Harrison Nguma (PW 21), Philip Odhiambo Patta (PW 28), Gladys Nyamula Chivatsi (PW 16), Roselyne Mwalukuku (PW 36) and Jane Wambui Kariuki (PW 37).
211. The assertion by these witnesses that the signatures in the payment schedules exhibited in court did not belong to them was confirmed by the document examiner in P. exhibit 29.
212. Essentially, therefore, the court finds that the exhibited schedules for payment of transport and lunches and also the attendance lists which were attached to the surrender payment voucher- P. exhibit 4 schedules were false.
213. Additionally, there is a matter that this court found baffling from these receipts. The receipt for the mineral water- dated 20/6/2009- P. exhibit 50; three receipts for computer accessories- for 20/6/09 for Kshs. 20,000/- P. exhibit 45; another receipt dated 22/6/09- for Kshs. 55,000/- P. exhibit 46 and the third of 24/6/2009- for Kshs. 15,000/- issued by Sharif Stationers on different dates and having different amounts strangely had the same receipt number 00455. As if this this is not enough, the same serial number was also repeated in three other receipts for stationery for namely the kshs. 41,000/- for 20/6/09- P. exhibit 41; 21/6/09 for Kshs. 33,000/- P. exhibit 42 and 22/6/09 for Kshs. 32,000/- P. exhibit 43.
214. Despite the 2nd accused saying she submitted different documents to account for the expenditure she had incurred, that matter which was within her special knowledge under section 111 (1) of the Evidence Act was not substantiated by evidence even of a simple document like a memo forwarding the summary of her expenditure to the 1st accused. Moreover, some of the questionable expenditure in the receipts such as the water receipt was found to be in the handwriting of the 2nd accused by the document examiner. On top of that, she was further implicated by her own colleague, Richard Ojuk Yugi who came to court and testified that the 2nd accused had instructed her to prepare new payment schedules after the workshop.

The last issue is whether it is the accused who knowingly furnished those false returns.

216. When the document examiner examined some of the exhibited the documents, he found them to bear similar handwriting and signatures when compared to the specimen signatures and known handwritings of the 1st accused, Concelia Ondieki. For instance, the handwriting on the payment payment schedule for officers’ lunches- P. exhibit 7; payment schedule for participants’ lunches- P. exhibit 6 (a) and transport reimbursement for participants- P. exhibit 75; the jet link boarding passes P. exhibit 78, the payment schedule for coordination- P. exhibit 52, the signature and handwriting against the name Martin Orwa was found to be similar and indistinguishable when compared to that of Concelia Ondieki, the 1st accused.



217. The payment/surrender voucher -P. exhibit 4 was found to bear a signature that could not be distinguished from the known and specimen signatures of Mrs. Concelia Ondieki, the 1st accused.
218. Additionally, P W 2 – Charles Onsego Opindi who was in the voucher preparation section in the Ministry at the time testified that it is the 1st accused who called him to his office and handed over to him all the documents then instructed him to use them thus he used them in preparing the surrender voucher- P. exhibit 4. He testified as follows on being referred to P. exhibit 4:
- “...I am the one who prepared the same. This was in the name of Mr. Orwa. I was called to Mrs. Ondieki’s office where I picked the imprest surrender voucher. I proceeded to her office where she gave me the document where I picked the surrender of imprest which had all its accompanying documents. I was asked to go and prepare a surrender voucher. I did not ask why she was giving me a surrender warrant in the name of Martin Orwa...”
219. Turning to the 2nd accused, although she stated in her statement of defence the documents she had submitted to account for the money are not in court, I have already found that that fact was a matter within her personal knowledge but did not demonstrate to the court.
220. Moreover, Richard Yugi (PW 4) implicated her for directing him to prepare new schedules leaving blank the part for the amount and signature.
221. Consequently, despite 1st and 2nd accused’s denials, the court finds that there is credible evidence that both accused knowingly participated in submitting false supporting documents that were attached to the payment voucher- P. exhibit 4.
222. In view of the foregoing findings therefore, the Court is satisfied that the Prosecution has proved count 1 against both accused beyond reasonable doubt and convicts them accordingly.
223. In regard to the 2nd count, which is an offence of fraudulent acquisition of public property contrary to section 45 (1) (a) as read with section 48 of the *Anti-Corruption and Economic Crimes Act* against the 1st accused; the court will be seeking to find out if there is proof beyond reasonable doubt that:
- i) The property/money in question was public property
 - ii) If the 1st accused acquired the same
 - iii) And if so, whether the 1st accused did so fraudulently
224. The issue of whether or not the money subject matter of this case was public property has already been resolved. The money belonged to the Ministry of Education hence it was public property.

Did the 1st accused acquire the same, if so, was it fraudulent?

225. The Prosecution led evidence to demonstrate that the 1st accused in an unauthorized manner not sanctioned by the Ministry’s Accounting Officer she irregularly substituted Martin Orwa and received the imprest of Kshs. 1, 478, 581/-.
226. There is evidence that indeed the planned infrastructure needs workshops in Coast region took place save that payments made to participants at the workshops were lesser than what was contained in the documents used to surrender the said imprest and in other cases, participants who did not attend were reflected as having been paid. Various witnesses testified in this court and disputed the amounts indicated against their names in those payment schedules as well as the signatures and this too was corroborated by the document examiner who found those signatures not to belong to them. To be



precise, in regard to a schedule P. exhibit 7 for instance; PW6, PW 19, PW 31 and PW 34 disputed they attended the workshop and thus they were not paid Kshs. 6000/- each reflected against their names and other personal particulars. PW 32- said he only received Kshs. 200 yet it was shown in P. exhibit 7 that he was paid 6000/- hence his amount was inflated by Kshs. 5800/-. In respect of P. exhibit 6a, PW 10, PW 21 and PW 16 did not attend the workshop yet a payment of Kshs. 600/- as payment for lunch was indicated. In the payments for coordination- P. exhibit 52, an amount of Kshs. 40,000/- was indicated as having been paid to Martin Orwa (PW 1) who was firm he never attended the workshops. P. exhibit 75, which was payment schedule for driver's per diem, the driver did not testify but there was evidence by her then superior (PW 20- Janet Abom Akello) that he had passed on. Nevertheless, he had given his specimen signatures during investigation and the document examiner's finding was that he could not have executed the document- P. exhibit 76- "schedule of the driver's per diem".

227. The above payment schedules in particular which contained these fabricated payments were examined and found to be in similar handwriting as that of the 1st accused. These are payment schedule for officers' lunches- P. exhibit 7; payment schedule for participants' lunches- P. exhibit 6 (a) and transport reimbursement for participants- P. exhibit 75; the payment schedule for coordination- P. exhibit 52 among others.
228. If therefore the amounts paid to participants were inflated while in other cases, no payment was made at all in the identified schedules as attested by the witnesses; it means the amount must have been pocketed by the person who falsified the schedules for why would the person be engaging in such falsification if not siphon the said money thus acquire it for her benefit? She could not just be doing it for fun or for imaginary ghosts to benefit. It was for herself.
229. I find that fabricating the payments by inflating the said amounts in the schedules and showing that people who did not attend were paid was one of the fraudulent acts she employed to acquire the amounts alluded to above.
230. The submission by Mr. Omuga that if the whole amount is not proved, the charge fails is a jurisprudentially incorrect. What the law requires is prove of fraudulent acquisition and where the prosecution has demonstrated some fraudulent acquisition occurred as in this case however minimal, that fact is proved notwithstanding that is not the entire quantum of loss that has been established. If the prosecution proves even a fraction of the amount was fraudulently acquired, that element is my very humble and respectful view established.
231. A charge of fraudulent acquisition cannot be invalidated by the mere fact that only a part of what was allegedly fraudulently acquired has been proved, as long as the portion that is proved was in fact fraudulently acquired and in this case, it would be the amounts in the exhibited payment schedules namely- P. exhibit 7, 6a, 75 and 52, there cannot be any doubt that acquisition of those amounts was achieved in a fraudulent manner.
232. The 1st accused was responsible for falsifying the amounts in the payment schedules P. exhibit 7; payment schedule for participants' lunches- P. exhibit 6 (a) and the transport reimbursement for participants- P. exhibit 75; plus, the payment schedule for coordination- P. exhibit 52 hence from the said proved facts I infer that the money paid in excess in those schedules and money allegedly paid to people who did not attend the workshop and thus disputed was fraudulently acquired by her.
233. The attempt to implicate the 2nd accused with the receipt of the entire of sum of Kshs. 1, 478, 581/- from the 1st accused was in furtherance of that fraud. That attempt flopped because that acknowledgement signifying the handing over Kshs. 1, 478, 581 from the 1st accused to the 2nd accused- P. exhibit 80 was found to be a fabricated document with the signature and handwriting matching the



- ones of the 1st accused who was allegedly giving out the money but not that of the alleged recipient, the 2nd accused. This shows the desperation that had engulfed the 1st accused who was hell bent covering his crime even if it meant fixing her junior with the entire burden of that impost as the failed attempt through P. exhibit 80 demonstrates.
234. The 2nd accused in her statement in court admitted to having received Kshs. 400,000/- only from the 1st accused to conduct the infrastructure needs workshop in Coast province. Nevertheless, this incriminating statement made against the 1st accused by the 2nd accused was made in her unsworn statement from the dock and thus cannot be used to reach the conclusion that the 1st accused must have appropriated the remainder. This is because the 1st accused did not have an opportunity to challenge that statement on cross-examination.
235. Be that as it may, from the foregoing analysis there is unequivocal evidence that demonstrates that fraud took place in respect of the said impost of Kshs. 1, 478, 581 and from the payment schedules exhibited before this court, especially P. exhibit 7, 6a, 75 and 52, the 1st accused succeeded inflating payments and also including as paid, people that had not attended the workshops thus falsifying the documents to acquire those amounts fraudulently.
236. The only thing that evidence adduced by prosecution fell short of establishing is the full extent of this fraudulent drain off by the 1st accused as the investigating officer explained in his evidence that they were not able to get every person allegedly paid but as already demonstrated, acquisition of whatever amount if fraudulent as was shown through the schedules referred to and testimony of witnesses was sufficient to prove that element of the offence.
237. All the elements of the charge are thus firmly established except the full quantum of what actually the 1st accused succeeded in pocketing. The failure to establish the full quantum of benefit acquired only gives advantage to the 1st accused in sentencing but does not negate the charge as all elements have been proved.
238. From evidence of obvious falsification of the payment schedules as confirmed by the document examiner and also witnesses whose testimony was able to shed light on the manner that this fraud was executed; I am satisfied that there was fraudulent acquisition by the 1st accused which is deducible from the facts of this case even without the entire quantum of money appropriated by her through those fraudulent actions being proved.
239. Looking at the overall conduct of the 1st accused which was characterized by taking of the impost in an irregular manner that was not sanctioned by the Accounting Officer, to providing false documents and trying to implicate her co-accused by fabricating a document showing she gave her the entire impost of Kshs. 1, 478, 581/-; I do not think she employed all that deception just for for the enjoyment; I find it was for personal gratification and she actually succeeded to swipe part of the impost on infrastructure needs assessment by use of fictitious payments and documents in this case as evidence on record has demonstrated.
240. To say she did not acquire any money fraudulently amid such evidence and circumstances of this case just because the full extent of what was acquired through this fraud has not been demonstrated would be mockery of the justice.
241. I find thus find count 2 against the 1st accused proved beyond reasonable doubt.
242. The rest of the counts, count 3 to 7, are forgery charges and affect the 2nd accused only. They relate to five fuel receipts; each receipt being the subject of a distinct count. In respect of the forgery contrary



to section 349 as read with section 345 of the Penal Code, the Court will be keen to find out if the following ingredients have been proved beyond reasonable doubt.

i) That the accused made a false document

ii) With intent to defraud or deceive

243. Counsel for the 2nd accused submitted that the Prosecution was unable to prove that the receipts in question were actually forged in that none of the three elements of forgery namely, proof that they were false and were intended to defraud or deceive was established.

244. That according to the investigating officer, the basis for preferring the forgery charges against the 2nd accused was because of alleged excess litres of petrol and writings in the receipts while there was no finding to support the issue of excess litres and no witness was called from any of the petrol stations.

245. He argued that mere writings on the receipts did not ipso facto amount to forgery and that it needed to be established that they were false and intended to defraud or deceive.

246. On her part, the 2nd accused stated that she was the one fueling the vehicle and apart from first occasion, she was present all the other times that the vehicle was being fueled.

247. Black's Law Dictionary, Tenth Edition, defines the word defraud to mean- "to cause injury or loss to a person or organization by deceit, to trick in order to get money"

248. To prove the offence of forgery therefore, it must be demonstrated by either direct evidence or inferences from proved facts that the accused intended a person to regard a particular false document as genuine and act on it to his or her prejudice such as economic loss or any disadvantage.

249. Under section 348 of the Penal Code, it provides that:

"A person makes a false document who-

a) Makes a document purporting to be what in fact is not..."

250. The governing principle of forgery is that a document must not only tell a lie, but that it must also tell a lie about itself. Smith & Hogan, 8th Edition illustrates this principle briefly follows:

"...Telling a lie does not become forgery because it is reduced to writing, it is the document which must be false not merely the information on it. If an applicant falsely states his qualification in his letter of application, the letter is not forgery, but if he writes a reference which purports to come from his employer, the reference is a forgery...because it purports to have been made in the form which it is made by a person (i.e. the employer) who did not make it in that form..."

251. The counts which the 2nd accused is charged with relate to fuel receipts that were allegedly drawn by a Government vehicle that the accused and the other team members were using for mobility while conducting the infrastructure needs assessment in Coast region.

252. All the five receipts are in the letter heads of four Petrol Stations, three of those receipts- the subject of counts 3 to 5 were bear the letter head of Warsame's Traders, namely: receipt number 56606 of 15/6/09- P. exhibit 35; receipt no. 56617-of 21/6/2009 -P. exhibit 37 and receipt number 56626- of 23/6/2009- P. exhibit 36. The receipt subject to count 6 was from Trans-Energy Kenya Limited receipt no. 13184 of 17/6/2009- P. exhibit 38-P. exhibit whereas the fuel receipt subject to count 7 bears the letter head of Malindi Service Station receipt number 119081 of 22/6/2009- P. exhibit 39.



253. It is true that no petrol station attendant from the four fuel stations was called to testify and evidence of vehicle's fuel capacity could not be credibly established by the prosecution witness called to attest to that fact. The witness from Mombasa DEO's office, Janet Abom Okello (PW 20) could not convincingly defend the capacity of the vehicle under cross-examination. She said:

“...I was told the capacity is 100 litres...Kike is the one who told me about the capacity and sometimes I would go to the petrol station with the driver to fuel...I have no documentary evidence to show the capacity of the vehicle...”

254. Further, although the document examiner's finding concerning the writing on the receipts was that it was similar to the handwriting of the 2nd accused, there was no evidence called by the prosecution from either the owners of the said petrol stations or even any of the petrol attendants to corroborate the fact of the falsity in those fuel receipts yet the Investigating officer confirmed the fuel stations existed and had that he had interviewed some of the attendants who had noted some variances. He said:

“...We interviewed the attendants in these petrol stations. Some indicated receipts were not genuine whereas in others, amounts in their records varied with amounts in these receipts...”

255. Unlike the receipts for stationery and mineral water which had features suggestive of obvious falsity such as bearing the same serial number in spite of being issued on different dates and for different amounts and the business entities that issued them could not be found by the investigating officer, the fuel stations existed and the investigating officer was able to talk to people in those stations and showed them the receipts he was investigating. Moreover, the receipts were unlike these others that have traits of falsity had different serial numbers for the various dates. The 2nd accused in her defence insisted they were genuinely issued after fueling their car and she was present in those occasions.

256. Even as I find the evidence of the document examiner to be important in this scenario, I am hesitant to base my decision on guilt of the 2nd accused solely on the finding that the writing implicates her without any other circumstantial corroborative circumstance, (even an indirect one) for instance, that the fuel drawn was not the quantity shown on the receipt or for the amount stated or no fuel was drawn at all so as to come to definite conclusion that indeed those receipts are falsified in regard to the material entries contained in them.

257. For reasons aforesaid, I will give a benefit of doubt to the 2nd accused in counts 3 to 7 and thus acquit her under section 215 of the Penal Code on those counts.

JUDGMENT READ, SIGNED AND DELIVERED IN OPEN COURT THIS 11TH FEBRUARY, 2021.

L.N. MUGAMBI (MR)

CHIEF MAGISTRATE

11. 2.2021

