



**Republic v Mugai & 3 others (Anti-Corruption Case
6 of 2012) [2020] KEMC 8 (KLR) (8 April 2020) (Judgment)**

Republic v Milicent Weruma Mugai & 3 others [2020] eKLR

Neutral citation: [2020] KEMC 8 (KLR)

**REPUBLIC OF KENYA
IN THE ANTI-CORRUPTION MAGISTRATE'S COURT
ANTI-CORRUPTION CASE 6 OF 2012
LN MUGAMBI, CM**

APRIL 8, 2020

BETWEEN

REPUBLIC PROSECUTOR

AND

MILICENT WERUMA MUGAI 1ST ACCUSED

SOPHIE WANJA MUGWE 2ND ACCUSED

PAUL THUO KIBUNA 3RD ACCUSED

EDWARD AMIANI ONGATI 4TH ACCUSED

JUDGMENT

1. There are a total of fourteen counts with each accused separately facing a fraction of those counts individually. However, the common theme in the entire fourteen counts is that they are all based on the offence of abuse of office contrary to section 46 of the Anti-Corruption & Economic Crimes Act, Number 3 of 2003.
2. The facts forming the particulars in some counts can conveniently be clustered together since they are transactions revolving around a shared subject cutting across a set of 3 counts in connection with that subject. To illustrate this fact, counts 1 up to 3 pertain to facts about one pensioner-Alice Wambui Kabiru; counts 4 up to 6 relate gravitates around a Pensioner by the name Charles Mwathi Muniu, Counts 7 up to 9 are connected with a Pensioner called Peter Mwangi Kariuki while Counts 10 to 12 relate to a Pensioner going by the name Hannah Waithera Njau. Only Count 13 is linked to a pensioner called Meshack Ayub Okemwa alone and Count 14 concerns a pensioner by the name Simon Kamande.



3. Notwithstanding this substantial interconnection in related counts though, the major distinguishing factor in them is found in the date each accused is alleged to have participated in the commission of the said offences with regard to the particular pensioner and the specific role that each is alleged to have played in facilitating the improper conferment of the alleged benefit.
4. In count I, the 1st accused, Millicent Weruma Mugai is charged with abuse of office contrary to section 46 as read with section 48(1) of the [Anti-Corruption and Economic Crimes Act, 2003](#).
5. The particulars are that on or about the 12th day of February, 2010 at the Pensions Department Offices in Bima House in Nairobi Area within Nairobi Province, being an Account Assistant at Pensions Department used her office to improperly confer a benefit of Kshs. 1 million on Alice Wambui Kibugi by examining and appending her signature on a payment voucher number 2009-10-007441 in respect of the pensions gratuity of the said Alice Wambui Kibugi, which had the lumpsum amount inflated from Kshs. 823,530.00 as per the pensioner benefit computation appendix form to Kshs. 1,823,530.00 on the payment voucher.
6. Count II relates to the same pensioner, Alice Wambui Kibugi, and is also an abuse of office charge but against the 2nd accused, Sophie Wanja Mugwe, an Accounts Assistant at Pensions Department. She is charged with improperly conferring a benefit of kshs. 1 million to Alice Wambui Kibugi on 14th February, 2010, by authorizing payment voucher number 2009-10-007441 that had the lumpsum amount inflated from Kshs. 823,530 as per pensioner computation appendix form to Kshs. 1,823,530.00 on the payment voucher.
7. Count III is an abuse office charge against the 3rd accused and relates to the same pensioner as in count 1. Paul Thuo Kibuna, an Accountant 1 is charged with improperly conferring a benefit of kshs. 1 million to Alice Wambui Kibugi on 12th February, 2010, by approving voucher number 2009-10-007441 that had the lumpsum amount inflated from Kshs. 823,530.00 as per the Pensioner benefit computation form to Kshs. 1,823,530.00 on the payment voucher.
8. Count IV is abuse of office contrary to section 46 of the [Anti-Corruption and Economic Crimes Act](#) as read with section 48 (1) of the [Anti-Corruption and Economic Crimes Act](#).
9. The 1st accused, Millicent Weruma Mugai, is charged that on the 7th day of February, 2010 at Pensions Department in Bima House within Nairobi Province, being an Account Assistant at Pensions Department used her office to improperly confer a benefit of Kshs. 1 million on Charles Mwathi Muniu by examining and appending her signature on a payment voucher number 2009-10-010806, in respect of the pensions gratuity of the said Charles Mwathi Muniu, which had lumpsum amount inflated from Kshs. 1,185,583.00 as per pensioner benefit computation appendix form to Kshs. 2,185,583.00 on the payment voucher.
10. Count V which relates to the same pensioner as in count IV is also on abuse of office charge but against the 2nd accused, Sophie Wanja Mugwe, Accounts Assistant at Pensions Department. She is charged with improperly conferring a benefit of kshs. 1 million to Charles Mwathi Muniu on 10th February, 2010, by authorizing voucher number 2009-10-010806 that had an amount of 1 million shillings which had lumpsum amount inflated from Kshs. 1,185,583.00 as per the pension benefit computation appendix form to Kshs. 2,185,583.00 on the payment voucher.
11. Count VI is an abuse office charge against the 3rd accused and relates to the same pensioner as in count IV. Paul Thuo Kibuna, an Accountant 1 is charged with improperly conferring a benefit of kshs. 1 million to Charles Mwathi Muniu on 7th February, 2010, by approving voucher number



- 2009-10-010806 that had the lumpsum amount inflated from Kshs. 1,185,583.00 to 2,185,583.00 on the payment voucher.
12. Count VII is abuse of office contrary to section 46 of the *Anti-Corruption and Economic Crimes Act* as read with section 48 (1) of the *Anti-Corruption and Economic Crimes Act*.
 13. The 1st accused, Millicent Weruma Mugai, is charged that on or about the 17th day of February,2010 at the Pensions Department in Bima House within Nairobi Province, being an Account Assistant at Pensions Department used her office to improperly confer a benefit of Kshs. 1 million on Peter Mwangi Kariuki by examining and appending her signature on a payment voucher number 2009-10-010581, in respect of the pensions gratuity of the said Peter Mwangi Kariuki, which had lumpsum amount inflated from Kshs. 466,024.00 as per pensioner benefit computation appendix form to Kshs. 1,466,024.00 on the payment voucher.
 14. Count VIII which relates to the same pensioner as in count VII is also on abuse of office charge but against the 2nd accused, Sophie Wanja Mugwe, Accounts Assistant at Pensions Department. She is charged with improperly conferring a benefit of kshs. 1 million to Peter Mwangi Kariuki on 10th February, 2010, by authorizing voucher number 2009-10-010581 that had lumpsum amount inflated from Kshs. 466,024.00 as per pensioner benefit computation appendix form to Kshs. 1,466,024.00 on the payment voucher.
 15. Count IX is an abuse office charge against the 3rd accused and relates to the same pensioner as in count VII. Paul Thuo Kibuna, an Accountant 1 is charged with improperly conferring a benefit of kshs. 1 million to Peter Mwangi Kariuki on diverse dates between 17th February, 2010, and 22nd February, 2010 by approving voucher number 2009-10-010581 that had an amount of 1 million shillings inflated above the properly computed gratuity lumpsum payment for Peter Mwangi Kariuki.
 16. Count X is abuse of office contrary to section 46 of the *Anti-Corruption and Economic Crimes Act* as read with section 48 (1) of the *Anti-Corruption and Economic Crimes Act*.
 17. The 1st accused, Millicent Weruma Mugai, is charged that on or about the 21st day of February,2010 at the Pensions Department in Bima House within Nairobi Province, being an Account Assistant at Pensions Department used her office to improperly confer a benefit of Kshs. 1 million on Hanah Waithiru Njau by examining and appending her signature on a payment voucher number 2009-10-010249, in respect of the pensions gratuity of the said Hanah Waithiru Njau, which had lumpsum amount inflated from Kshs. 695,760.00 as per pensioner benefit computation appendix form to Kshs. 1,695,760.00 on the payment voucher.
 18. Count XI which relates to the same pensioner as in count X is also on abuse of office charge but against the 2nd accused, Sophie Wanja Mugwe, Accounts Assistant at Pensions Department. She is charged with improperly conferring a benefit of kshs. 1 million to Hanah Waithira Njau on or about the 22nd February, 2010, by authorizing voucher number 2009-10-010249 that had lumpsum amount inflated from Kshs. 695,760.00 as per pensioner benefit computation appendix form to Kshs. 1,695,760.00 on the payment voucher.
 19. Count XII is an abuse office charge against the 3rd accused and relates to the same pensioner as in count X. Paul Thuo Kibuna, an Accountant 1 is charged with improperly conferring a benefit of kshs. 1 million to Hanah Waithira Njau on diverse dates between 21st January, 2010, and 22nd February, 2010 by approving payment voucher that had the lumpsum amount inflated from 695,760.00 as per pensioner benefit computation appendix form to Kshs. 1,695,760.00 on the payment voucher.



20. Count XIII is an abuse of office charge contrary to section 46 as read with section 48 of the *Anti-Corruption and Economic Crimes Act*, 2003 against the 4th accused, Edward Amian Ongati.
21. The particulars are that on or about the 29th day of January, 2010, at the Pensions Department Offices in Bima House in Nairobi Area within Nairobi Province, being a clerical officer at Pensions Department used his said office to improperly confer a benefit of Kshs. 1 million on Meshack Ayub Okemwa by prepairing schedule number 444112 in respect to the pension gratuity of the said Meshack Ayub Okemwa, which had inflated figures.
22. Count XIV is an abuse of office charge contrary to section 46 as read with section 48 of the *Anti-Corruption and Economic Crimes Act*, 2003 against the 4th accused, Edward Amian Ongati.
23. The particulars are that on or about the 27th day of November, 2009, at the Pensions Department Offices in Bima House in Nairobi Area within Nairobi Province, being a clerical officer at Pensions Department used his said office to improperly confer a benefit of Kshs. 1 million on Simon Kamande by prepairing schedule number 444998 in respect to the pension gratuity of the said Simon Kamande, which had inflated figures.
24. An overview of the Prosecution case is as follows. The case arises from pension payments in respect of six pensioners assessed and processed for payment in the financial year 2009/2010. The gravamen of the case is that genuinely assessed pension award in respect of the six pensioners was escalated by a million shillings for each pensioner beyond what had been computed and found payable by the Director of Pension. The alleged crimes are said to have occurred at a time when the Department of Pensions was migrating its Pension System supported by Legacy data base to the new Pensions Information Management System anchored on oracle database that the Department had procured from RPC Consultants of Botswana.
25. The award and payment of Pension to pensioners was a long process if the descriptive account attested to by the witnesses before this Court is anything to go by. To understand if any crime was committed, an appreciation of the entire process is necessary in order to ascertain where, if any, the process was short-circuited to facilitate the alleged crimes if indeed they were committed, and if so, whether the accused were responsible for the said criminal acts or not.
26. Paul Kabui Karimi (PW 2) who had worked as ICT Officer with Pensions Department from the year 2005, P.W. 9 Julius Nzioka, a Senior Pensions Officer in the Pensions Department and P.W. 12 Gerald Mbaabu M'Ikunyua, the Chief Accountant at Pensions Department gave a vivid description of the process that a pension claim had to go through before payment at the time when the Department was also shifting from legacy data base to Pensions Information Management System which it adopted in February, 2009. During the migration period, the manual system was running concomitantly with the computerized system.
27. Paul Kabui Karimi, told this court that the new Pensions Information Management System was role based whereby each user was assigned roles and responsibilities in the system that was configured to allow accessibility only in areas one was authorized. The other feature in the system was that it was workflow and alert based.
28. From the combined evidence of P.W.2, Paul Kabui Karimi; P.W. 9, Julius Nzioka, P.W. 12, Gerald Mbaabu M'Ikunyua and Samuel Kipyego Malakwen (PW 11);the Court learnt that for a pension claim to be settled by the Pensions Department , it was a process that had several layers or stages; at each level, the contents of the physical file had to be compared with what was in the system hence the person confirming details at any particular level had to confirm the existence of that information both-ways



in that, the physical information that moved contemporaneously with the electronic information at every level had to tally with what was in the system for the next stage to be activated to receive and progress the process. The processing levels for pension claims as described by these witnesses were as follows: Claims Section- this is where pension claims from different ministries were being lodged. Pension Officers were then tasked with collecting the pension claim forms (G.P. 178) that had been filled in the originating parent ministries of retirees and any other required documents submitted for processing of the pension claims and forwarding them to the Data Capture Section. Data Capture Section- all information required to process a pension claim was entered into the system using the documents received from the claims section. The information would include; the name of the retiree, personal number, identity card number, the Ministry the claim is coming from, terms of service, last three years' salary and contact address. It would also include documents submitted together with the pension claim form such pin number, tax clearance, retirement letter etc. Once done, the data capture personnel would click save. The system would then open a folder for all these documents and indicate the name of the pensioner on top of the folder and also allocate a pensioner file number. It would also produce a workable data to facilitate assessment and generate an alert marking the file to an assessor at the next level. Assessment section- the physical file would move to the assessor for comparison with details of the electronic file in the system. The assessor makes the assessment and indicates the amount of pension payable in the pension benefit computation appendix page 5 which he prints and signs. Once he is done, the system generates an alert to the next level. The physical file equally moves to the next level. Audit- the assessment was being audited at level two levels, level (i) & (ii), the auditors append their signatures on pension computation appendix p.g.5 once they are satisfied with the computation of pension by the assessor. Directorate Section- the Director of pension gives the final assessment approval and with the authorization, the physical file is moved to the Accounts Section plus the electronic file by activation of the alert in the system. Accounts Section- activities that took place in the accounts section were: SUBPARA i.

Voucher Preparation/creation- It involved printing of payment vouchers upon examining details in the physical file and those in the system. A voucher had to be printed based on the final approved assessment if the details in the physical file and the system were similar. The one printing would sign on the part of examination to confirm that he/she printed the payment voucher upon confirming details on the screen against the physical file.

SUBPARA ii.

Voucher authorization- Authorization entailed, receiving the pension claim and the voucher of the pensioner to check the correctness of voucher against the details of the pensioner in the physical file.

SUBPARA iii.

Voucher verification – over and above ascertaining the correctness of the name, I/D Card Number under verification, he would check the gross payable, any deduction to be made on the gross payable, arrears payable to the pensioner, net amount payable and the bank details among other particulars.

SUBPARA iv.

Voucher approval- verifying that the amount claimed tallied with what was awarded by the Directorate and computed consistently and correctly with details in the physical file and the system. The approver generally checked the completeness of the entire process both in the Pensions Department and information obtained from the Parent Ministry.

Cash Office- The first activity in cash office was to sort out files received from the various accounting groups, then generation payment schedules by the paying officer. The schedules generated had to be subjected to checking/examination by another person other than the paying officer who had generate them. This was to enable checking and verification by going through the schedules to confirm that



entries in the schedule were fully supported by payment voucher and other documents inside the respective files. P.W.12 explained:

“...During every stage, the officer had a complete pension file which comprised of a Standard Claim form G.P 178 together with all supporting documents from the previous employer and also internally generated documents with all the previous approvals from other sections...”

According to Samuel Kibyego Malakwen, PW 11, once the schedules were verified, the verifying officer would compile a schedule analysis report in respect of the schedules he/she verified indicating the total value of each schedule and return the verified schedules together with the schedule analysis report to the paying officer who prints the final verified schedule control report. Pension Information Management System process controls; according to Gerald M’Ikunyua (PW 12) ended at this point, that is, when the paying officer printed the final verified payment schedule control reports which he then handed over together with the EFT request schedule analysis report prepared by the officer who examined the schedules to the next officer who was to commence the G-Pay process. G-Pay- the next stage is the commencement of the G- Pay process. The officer at this level would start by keying in the payment schedule numbers captured in the schedule analysis report into the system, the information of this particular schedule would then pop up which he would examine against the details contained in the physical schedule control reports and also confirm the total value of each schedule against the total in the schedule analysis report. If okay, this officer would save the information in a flash to and print a copy of G-PAY. This was according to the evidence of Catherine Bibiana Kalali (PW 18). PARAGRAPH 31. The G-Pay that is generated is examined, verified and approved by officers authorized by Central Bank. A physical copy of the G- Pay would be forwarded to CBK plus a flash disk together with instruction letter for the money to be transmitted to the pensioners’ accounts. It is only authorized personnel whose mandate had to be provided to Central Bank who could issue written instructions to Central Bank requesting it to pay. Additionally, persons charged with presentation of the physical copy of G-Pay Schedule and the encrypted information in a flash disc to Central Bank, known as endorsers, had to be those authorized by the Directorate and details their details provided to Central Bank.

29. Messalina Ambio Anduro (PW 1) also an ICT Officer based at Pensions Department stated that sometime in November, 2010; she was tasked to work with cash office in resolving some challenges which had been detected whereby some payments were showing as credit and debit in the same account. To address the issue, she needed EFT reports since inception which she found by querying the system through feeding the EFT date, number, the amount and the schedule numbers. She then gave her reports to the cash office to reconcile with the G-Pay that was sent.
30. Catherine Kalali (PW 18) of cash office then informed her that a certain schedule number 443997 (P. Exhibit 1) was not advised to Central Bank for payment. She queried the system further and discovered that one pensioner, Simon Kamande Mwangi whose name appeared in schedule 43997 (P. exhibit 1) of 26/11/2009 under EFT Number 4400 for the Kshs. 1,023,578.60 had been paid through another schedule number 443998 (P. exhibit 3) of 27/11/2009 under EFT number 4429 for Kshs. 2,023,578.60.
31. In respect of another pensioner, Meshack Ayub Okemwa the amount in the payment voucher which was in the system differed with what was in the schedule control report that was used to process the payment. She thus informed her boss Andrew Opiyo (P.W. 3) about that discovery.
32. Simon Kamande Mwangi’s voucher no. 2009-10-009100 (P. exhibit 5a) which was in the system had net payment of 1,023,578.60 yet the EFT schedule control report-443998 (P. exhibit 3) dated 27/11/2009 that informed the contents of the G-Pay had increased the same to 2,023,578.60.



33. For Meshack Ayub Okemwa, the payment voucher no. 2009-10-007531 (P. exhibit 6) found in the system had a net amount of Kshs. 727,007.30 but the EFT schedule control report number 444112 (P. exhibit 7) which advised what was to go to G-Pay dated 29/1/2010 had Kshs. 1,727,007.30.
34. She testified that she also queried the workflow in respect of these two cases. For Simon Kamande Mwangi, she found that on 26/11/2009, E. Leware created the voucher, D. Juma authorized same date at 16:12 p.m., J. Simba verified on the same date at 16:16 p.m., and was approved by S. Muchina on that very day at 16:43 p.m. Schedule number 443997 (P. exhibit 1) for Kshs. 1,023,578.60 was printed by E. Amian on the same 26/11/2009 at 17:06 p.m.
35. The same voucher was also contained in the schedule control report 443998 (P. exhibit 3). Voucher showed it was created by E. Leware while J. Simba was still showing as the verifier on the same date and time as was in the previous schedule 443997 (P. exhibit 1). However, the timing and date for the approver, S. Muchina changed to 27/11/2009 at 12:35 while printing was indicated as E. Amian on 27/11/2009 at 13:18 p.m.
36. For Meshack Ayub Okemwa, voucher preparation/creation was on 6/10/2009 at 10:22 a.m. by J. Ndungu and the net amount reflecting then was Kshs. 727,007.30. P. Mwangi was shown as the verifier on 27/1/2010 at 16:54 where the amount shot to Kshs. 1,727,007.30. J. Mugo approved it on 28/1/2010 at 12:39 p.m. and E. Amian printed it on 29/1/2010 at 17:18 p.m. She did not see the actual physical files of Simon Kamande Mwangi or Meshack Ayub Okemwa.
37. On cross-examination by Mr. Masinde she conceded that the amendments could not have occurred without assistance of the IT personnel, she said:

“...I mean files may have a problem and the voucher department or cash office can approach us to rectify the problem. From my understanding, the tampering must have been done with an ICT person...The trail would have revealed who had done the tampering. My boss Mr. Opiyo informed me the trail had been switched off. I never inquired further who switched off the trail...”
38. Catherine Bibiana Kalali (P.W. 18) was in the year 2009, a Senior Accountant in Ministry of Finance, Pension Department. She was based in Cash Office where her major duties were posting in the cash book and downloading the schedule in order to prepare the G-PAY.
39. She confirmed that once vouchers were received in the cash office by the paying officer, the paying officer who was generating the schedules from the system, checked them and then passed them over to an examiner who examined them. If the examiner found them in order, he would return the schedules to the paying officer. The paying officer would print the schedules and take them to her for the G-pay process to commence.
40. At G-pay stage, she was extracting the total amount from the schedules, using the EFT request schedule analysis- (P. exhibit 52); if it was okay, she would save it flash disc and proceed to produce the G-PAY.
41. She would give it to the second person, the verifier, if satisfied, he/she would and pass it over to the 3rd person, the approver. The approver prints the final copy and saves in a flash disc. They would all sign and the G-Pay which would then be taken to Central Bank by the authorized person, the endorser, under a letter of instructions indicating the total number of items in that G-pay schedule. The endorser would take to CBK two copies of G-pay Schedule and a flash disc.
42. Thereafter, the vouchers plus the corresponding G-pay would be sent to the dispatch section where the vouchers would be separated from the files and taken back to cash office for posting in the cash book.



43. In the cash book the following details were recorded: The date of posting the voucher in the cash book Schedule number Total amount of that schedule PARAGRAPH 46.
44. After posting, there was an accountant tasked with checking the cash book. The vouchers would then be taken to the ledger for filing.
45. Concerning this case, she recalled that in November, 2010, the Principal Accountant, Mrs Nzuki allocated her the duty of reconciling payments that had been paid to Chief Accountant Pension [in short, CAP]. At the time, the Department had started the process of changing its system.
46. The IT unit was required to produce all records of payments made to Chief Accountant Pension to be reconciled with the G-PAY for that financial year.
47. In the course of undertaking the assignment, she came upon a figure which of Kshs.84, 000/= that was not showing anywhere in the G-PAY.
48. She consulted an IT person, Messalina Andulo (PW 1) to try and figure out where the payment could have been made. Messalina told her it was payment through schedule 443997- P. exhibit 1.
49. She then checked from the schedule numbering register for financial year 2009/2010 (P. exhibit 2) and discovered that some of the details in respect of that particular schedule were left blank, meaning it had not been paid. In the system though, the schedule had figures yet in the cash office register, these details were missing.
50. In the schedule numbering register, the said schedule number 443997-P. exhibit 1 showed the name of the paying officer was Amiani and the date when the schedule was paid was 26.11.2009, his signature which she was familiar with was there.
51. There were 26 items in schedule 443997, and the total amount in that schedule was Kshs.27,024,318.40/=. From the register, it appeared like Central bank was not advised to pay the customers in that schedule.
52. Messalina Anduro (PW 1) then discovered, through the system, some items in that schedule-P. Exhibit 1; were transferred to another schedule number 443998. She then printed both schedules- 443998-P. exhibit 3 and 443997- P. exhibit 1.
53. In schedule 443997- P. exhibit 1, payment to Simon Kamande Mwangi was Kshs. 1,023,578.60 which was to be paid through Equity Bank on 26.11.2009 via EFT No.4400 but the schedule had not been advised.
54. In schedule No.443998-P. exhibit 3, which had 22 items and a total amount for the schedule being Kshs.22,806,472.70/= Simon Kamande Mwangi was paid through Equity Bank-Kshs. 2,023,278.60 on 27/11/2009 under EFT number 4429. The difference between what was to be paid in P. exhibit 1 (schedule 443997) and P. exhibit 3- schedule number 443998 which was paid had now increased by Kshs. 1,000,000/-.
55. She also confirmed schedule 443998 had also been posted in the cash book and checked by the accountant.
56. After noticing the enhancement of Simon Kamande Mwangi payment by Kshs.1, 000,000/= she informed the Chief Accountant, Mr. Gerald Mbaabu (P.W. 12).
57. She was asked to retrieve the file of Simon Kamande Mwangi from registry plus the payment voucher and other supporting documents from the ledger section.



58. The pension file for Simon Kamande Mwangi could not be traced from its pocket in the registry. The voucher for Simon Kamande Mwangi could also not be traced from the ledger either.
59. After reporting to Chief Accountant, the matter was escalated to the Principal Accountant and the ICT unit was required to find out if there other instances with that problem.
60. She produced the two schedules-443997 and 443998 in evidence as P. exhibit 1 and 3 respectively.
61. The exercise that followed also unearthed the payment to Meshack Ayub Okemwa who was paid in schedule number 444112 (P. exhibit 7) the amount of Kshs. 1,727,007 through KCB under EFT number 7427 on 29.1.2010.
62. The schedule numbering register- P-Exh- 2 at page 26, showed that schedule No.444112 – was paid by Amiani on 29.1.2010 going by the signature of paying officer which she was familiar with. The schedule had 23 items. The total amount advised to Central Bank was Kshs.18,333,588.80/=. The person who examined the schedule was Malakwen who was also stationed in cash office. He had examined the schedule on 1.2.2010. She described the role of a paying officer and that of an examiner in the cash office as follows:
- “...The officer examining the schedule was supposed to check if the vouchers were tallying on the schedule i.e. if payee in the voucher was the same as in the schedule, i.e. every details of payee especially name and the amount.
- The officer paying would pay first then it would be taken by examiner. The paying officer was to key in the pension number in the system, compare what was in the system with what was in the voucher. If it is okay, he was supposed to approve. It was the payment voucher which was always together with the whole file...”
63. This particular schedule was taken to Central Bank by Wainana on 5/2/2010 and in the dispatch it was received by Joyce Gathogo on 8/2/2010.
64. Schedule control report number 444112 (P. exhibit 7) was retrieved from the registry but the pension file for Meshack Ayub Okemwa could not be traced in its pocket too. In the ledger, the payment voucher for Meshack Ayub Okemwa could not be traced either.
65. The system generated payment voucher Simon for Kamade Mwangi number P3200-10-009100 (P. exhibit 5a & certificate 5c-; later on produced by PW 34, Joshua Okonyo Juma) had net amount of Kshs.1,023,578.60/= which comprised of assessed lumpsum of Kshs.896,280.00/= plus arrears Ksh.169, 740/= less tax of Kshs.42, 442/= making the total payable under pension file APN/PC/220445 to be Kshs.1,023,578.60/= yet the amount advised to central bank in schedule 443998- [P. exhibit 3] was Kshs.2,023,578.60/=. That print out from the system (P. exhibit 5a) was never processed. The original voucher that was used to make payment of Kshs. 2,023,578.60 was not traced, not even a copy of it.
66. With respect to Meshack Ayub Okemwa, Pension file number 221513, the system Payment Voucher No.2009-10-007531 (P. exhibit 6a-;later produced by PW. 34, Joshua Okonyo Juma together with the certificate P. exhibit 5 (c) was also not processed. The net payable in this voucher was Kshs.727,007.30/ = .In schedule control report number 444112 [P. exhibit 7] Kshs.1,727,007.30/= had been paid, which was more by Kshs.1, 000,000/= compared with what was in the system payment voucher- P. exhibit 6a. Neither the original nor copy of the payment voucher for Kshs.1,727,007.30/= was found.
67. She confirmed that she verified the EFT request schedule analysis dated 22.12.2009 (P. exhibit - 52] which she produced in evidence. It had 18 schedule control reports totaling Kshs.346,228,821.55/=



and at item No.6 was schedule number 443998 for Kshs.22,806,472.70/=. According to her, before the schedules reached her;

“...There are other officers who were supposed to pay and examine...”

68. She went ahead and produced the G-PAY dated 22.12.2009 -P. exhibit 50 whose total was the same as the amount in the EFT request schedule analysis- P. exhibit 52. The G- Pay was verified by J.M. Simba and approved by G.M. M' Ikunyua on 22.12.2009. The G-PAY (P. exhibit 50) was honoured by CBK which received it on 22.12.2009.
69. On page 13 of the G- Pay-(P. exhibit 50), transaction no.5, was Kshs.2,023,578.60/= that was credited to Account No.000090100146679 for Simon Kamande Mwangi of pension file number APN/[PC/220445](#) by debiting Pension Account number- 010103051.
70. On 5/2/2010, there was instruction letter to CBK (P. exhibit 8) CBK instructing CBK to credit 144 items with Kshs.137,671,390.30/=. The letter was delivered by Samuel Gitau Wainaina and was also signed by authorized signatories M.W. Mukunya and G. M. M' Ikunyua. The G-PAY was signed by C.B. Kalali (P.W. 18), verified by J.M. Simba and approved by G.M.M' Ikunyua.
71. In that G-Pay reference number 051010000007427, Kshs.1,727,007.30/= was credited to account No.005001115578650 for Meshack Ayub Okemwa pension file number APN/[PC/221513](#) by debiting Pension Account 0010103051.
72. On cross-examination by Mr. Onsongo for 4th accused, she clarified she was in charge of Mr. Amian who was the paying officer in the cash office. She asserted:

“...I was in charge in the cash office. I was the immediate boss of Mr. Amiani. It meant overseeing and assigning duties...”

73. She further explained on further cross-examination that Amian (4th accused) was doing the work of printing and checking the schedules against the voucher details while Mr. Malakwen was verifying them, and if okay, Malakwen would return the schedules to Amian for the G-pay process to kick off.
74. However, counsel drew her attention to the fact schedule number 443998 which she Okayed for processing to G-pay and which, although appearing in the schedule numbering register-P. Exhibit 2 as not to having been examined by anyone; in the EFT request schedule analysis report- P. Exhibit 52, it was evident she the person who had examined that particular schedule going by the fact that it was contained in the EFT request schedule analysis report-P.exhibit 52 which she had compiled. Her response was as follows:

[Referred to P. exhibit-2 – Schedule numbering register]

“...from the register, it shows schedule 443998 was not examined. I had to examine the schedule. The original would have shown if it was examined or not. From the register, it shows it was not examined. If I may say the truth, this time I was on leave...”

75. Andrew Nyawango Opiyo (PW 3) was the in-charge of the ICT Officers and part of his duties included assigning work to ICT and overseeing the implementation of the Pension Management Information System which the Pensions Department had procured from RPC Data of Botswana in 2009.
76. During migration from the previous system to the new one, some challenges were experienced such as duplication of data, mismatching of pension data, or even problems of missing data hence to facilitate migration, groups were created and ICT officers were attached to those groups to ensure they assisted



them if they encountered any challenges. Further, user accounts for the users were created but the user account for the ICT staff could access all modules. He stated:

“...We did create user accounts for new users, and also had a user account ICT which could access all the modules to facilitate migration to the new system. This user account was accessible to the ICT staff...”

77. He stated that the Pension Information Management System had an audit trail but the Consultant disabled it on grounds that it was causing memory problems; he explained:

“...The Consultant informed me it did not have audit trail; it was disabled because it was causing memory problems...”

78. Asked what effect this had on the working of the system, he explained:

“...The effect of lack of audit trail with regard to this case is without one, we were not able to find out who did what in the back end system...”

79. Mr. Opiyo testified that it is group- Registry Group 2 which had ICT officers Mary Anduro (PW 1), Simon Kamau (PW 22) and Julia Ochieng (PW 19) attached where the issues relating to this case arose affecting six files, four of which were paid on the same date of 22/2/2010. All the files were characterized with inflated amounts of Kshs one million up from the originally assessed figure.

80. When he enquired from the ICT Officers attached to the Group RG-2, they denied that any of the mentioned files was ever referred to them to resolve migration related problems. He said:

“...I then discussed the matter with the ICT Officers attached to this group wanting to know if they had handled these files. They replied they hadn't which meant these files did not have any data migrations problems...”

81. On cross-examination by Mr. Masinde, he stated that his evidence was solely based on what was generated from the computer.

82. Responding to questions on cross-examination from Mr. Onsongo, he conceded as follows:

“...I confirm alteration of the figures could only be possible with assistance of ICT personnel. No one from ICT was charged, the four accused were not working in ICT...”

83. Julia Kimija Ochieng (P.W. 19) testified that she worked as an ICT Officer in Treasury, Department of Pension. In financial year 2009/2010 she was facilitating data capture, assessment and new cases. Her role in new cases was facilitating amendment of vouchers to enable capturing of arrears in in a payment voucher because the new system was not configured to compute that aspect. The vouchers were being forwarded by the accountant who had made the amendments. She would amend the arrears part in the system voucher in exactly the same way the accountant had done on the voucher.

84. After amending, she would tick against the voucher to show that the amendment had been done so that the file is not taken to her again.

85. She would then record the files she had worked on in her own register and take the file to voucher preparation to make a new voucher. The old voucher with corrections would remain in the file. After the new voucher is printed, the file is taken back to voucher authority. The accountant would go



through the voucher once more, if it is okay, it would go to the next level, which was verification and approval.

She explained:

“...The accountant calculates and cancels the wrong arrears and writes the correct arrears. That is the amount I could amend in the system. Once I am given the file, I call the file using the file number-APN/PC and the number of the file. I open the voucher area and click on arrears and the area is enabled. I am thus able to correct the correct amount as per the voucher. Once I capture the correct amount, I save, record the file number in my register and take file to voucher preparation. It was work of supervisor to give roles. I was given the role of amending only the arrears. I cannot know whose role it was to correct the lump sum...”

86. In the New Cases Section, she was with ICT Officers, Simon Kamau (PW 22) and Marcelina Anduro (PW 1).

87. She stated that she would maintain her register where she recorded the files going to her for purposes of making amendments and after working on them, she would release them back.

88. She exhibited her personal register Julia Kimijaa Ochieng for the period 3/11/2009 to 25/1/2012 – P. exhibit- 65

89. According to her register- P. exhibit 65, (which she produced in evidence), in the list of files she worked on 2.2.2010, item number 2 was file number PC 222864 for Hannah Waithera Njau (P. exhibit 39) taken to her from accounts section, she said amended the arrears part and returned it to accounts.

90. However, looking at the file before the court (P. exhibit 39) she stated:

“...It is file No.222864, it is the file captured in my register. It is allocated to registry group 2. I was facilitating files for registry group 2. The name of pensioner is Hannah Waithera Njau...”

91. [Asked to look at the file and say what shows she worked on the file, she stated].

“...I cannot confirm whether I worked on this file or not because the voucher I used to do the amendments is not in the file [MFI- 39]. The amended voucher would ordinarily be on the first page...”

92. [Asked to look at P. exhibit – 42, payment voucher in respect of pensioner file number APN/[PC/222864](#)] she stated:

“...This is a voucher which is already paid because I can see the stamp and date it was paid. The pensioner is Hannah Waithera Njau. Pensioner file no. APN/[PC/222864](#). The payment voucher was printed on 21.1.2010. According to MFI- 65 (her register), I amended the voucher on 2.2.2010. Looking at this payment voucher, it appears it was printed before I made the amendments. Looking at MFI- 42 and register, it is not the voucher that was printed after I made the amendment because it should have been printed after or the same day...”

93. According to her register (P. exhibit 65) on 10.2.2010, she worked on 15 files. Item 13 was the pension file no. APN/[PC/222821](#) (P. exhibit 33 for Peter Mwangi Kariuki). The file came from Accounts



Section. She said she amended the monthly arrears in the system and it went back to accounts section. After perusal of Pension file – P. Exh- 33 in Court, she explained:

“...The file has no voucher that I amended. It would ordinarily be on the top page. It is not in this file...”

94. [With regard to payment voucher P. exhibit- 34], she said:

“...It is a paid voucher for Peter Mwangi Kariuki- Pension File No. APN/[PC/222821](#). The voucher was printed on 17.2.2010...I worked on the file of Peter Mwangi Kariuki on 10.2.2010. It was printed after I had worked on the file... I cannot see the voucher I used to amend the voucher with. I cannot tell if it is the one or not...”

95. On cross-examination by Mr. Masinde, she conceded that amendments could not have occurred without the involvement of ICT personnel. She said:

“...Amendments could not be done without involvement of ICT personnel. If there was enhancement, it could have been done with involvement of ICT person. 1st and 2nd accused were not ICT Officers...”

96. Isaac Mumo Sila (PW 4) was a Senior Pensions Assistant and his duties included computation of pension claims from different Government Departments to determine the pension award to be paid to pensioners retiring from service.

97. He confirmed he assessed and filled the Pensioner Benefit Computation Appendix form (P. exhibit 31 a & b) indicating the amount of gratuity/ lump sum to Alice Kabugi was Kshs.823, 530/= and signed it on 11.9.2009. Internal Audit checked and approved his workings on 28.9.2009.

98. He denied the amount of Kshs. 1,823, 530/- appearing in the payment voucher (P. exhibit 32) for Alice Wambui Kabugi was borne out of his computation.

99. He also assessed and filled the pension benefit computation appendix dated 27.10.2009 for Peter Mwangi Kariuki and computed the lump sum amount payable at Kshs.466,024/=. He signed the Pensions Benefit Computation Appendix form at page 5 and forwarded it to the Auditors. He produced the GP 178 for Peter Mwangi Kariuki as P. exhibit-33. He told this court that the payment voucher for Peter Mwangi dated 17/2/2010 (P. exhibit 34) which had an amount of Kshs. 1,466,024 was not in line with the assessment he had done.

100. He also prepared the pension benefit computation appendix (. P. exhibit 35) for Charles Mwathi Muniu on 4.1.2010 where he found that a sum of Kshs.1, 185,583/= was the amount of lump sum gratuity payable and and forwarded it to the Auditors. He said the payment voucher dated 7.2.2010 in respect of pensioner Charles Mwathi Muniu for Kshs.2, 185,583/= P-exhibit 36 was above the assessed amount payable to the pensioner by 1 million shillings.

101. When showed the voucher for Alice Wambui Kabugi-P. Exhibit 32 during cross-examination by Mr. Masinde and asked if he could tell who had signed the said voucher, he stated, Isaac Mumo Sila (PW 4) responded:

“...By looking at it, I would not tell who prepared the voucher. It is signed, I can't identify the signature, there is a second signature, I think I can relate it to the second person on the



bench. I am forgetting the name. We used to call her Sophie. It is the second signature in blue, authorizing the payment...”

102. Paul Ndambuki Muturi (PW 5) a Senior Pensions Officer described his duties as assessing pension claims, processing pension papers and correspondence. He testified that he worked on the pension file for Meshack Ayub Okemwa. He assessed the lumpsum claim at Kshs.663, 071/= . The pension benefit computation appendix P- exhibit 37 was a print out from the system but he vouched for the same saying that this is the same amount he had computed.
103. On cross- examination by Mr. Onsongo he said:
- “...Form GP 178 is prepared by the employer of the Pension. This is the document together with the annexures used to compute the pension due, and this is done through a document known as page 5 [Ref to page 4 P -exhibit 37]. There are no entries; there are no entries also on page 5.
- [Challenged that page 5 , is blank]. When I was recording my statement, I was given these two numbers for Meshack and Nkilili. When I went back to the office, I confirmed, I checked what I did and found it is the same figures I had submitted in the work flow. I have a print out of the work I did. It is not before the court. There is nothing in the file to show I worked on this file. The figures of Kshs.663, 071/= does not appear in P. exhibit -37. Just looking at the file, you cannot tell I worked on this file...”
104. Damaris Mutete Kiamba (P.W.6) – worked for the National Treasury, Pension Department as a Senior Pension's Officer, between the years 2009-2013. She testified that she worked on Pensions file Number APN/[PC/222864](#) (P. exhibit 39) for the Pensioner Hannah Waithera Njau.
105. She assessed the pension and printed out the pension benefit computation appendix (P. exhibit 40). At Page 5 ((P. exhibit 41), it indicated the amount to be paid as pension gratuity which was Kshs. 695, 760= . She completed the assessment on 16/11/2009 printed the pension benefit computation appendix and signed at page 5 of the appendix.
106. It was audited on 18.11.2009 and stamped; the claim was approved by the Directorate on 20.11.2009.
107. She stated that the payment voucher P. exhibit 42 for Hannah Waithera Njau showing the gratuity lumpsum due to her was Kshs. 1, 695,760 and stamped paid on 22.2. 2010 was not based on the amount she had assessed.
108. Julius Nzioka (PW 9) a Senior Pension Officer with Pensions Department confirmed that he assessed the pension for Simon Kamande’s and found the amount payable was as per pension benefit computation appendix- P. exhibit 47 on 14/8/2009. The lumpsum payable was Kshs. 896,280/- and a monthly pension of Kshs. 11,204/-.
109. Peter Wanyahe Mwangi (P.W. 7) – was an accountant at Pensions Department dealing with verification of payment vouchers.
110. He explained that files would be delivered via by register and when he finished verifying, he would sign in the register then click for the system alert to move to the next level of approval.
111. He testified that he shared the movement register with Mr. Mugo. The extract of their register Mwangi/ Mugo was produced as- P. exhibit 43.
112. It showed he received the pensioner file for Hannah Waithera Njau -APN/PC 222864 (P. exhibit 39) on 5/2/2010. He stated that payment vouchers were moving together with the pensioners file and the



register. The lumpsum to be paid to Hannah Waithera Njau had been assessed at Kshs.695, 760 –as per P. exhibit 41 and it tallied with the voucher that accompanied the file. He verified the payment voucher and also passed it in the system so as to forward the file electronically and then physically to Mr. Mugo for approval. He signed off in the register on 5.2.2010. The same day Mugo received the pensioner’s file (P. exhibit 39).

113. [Commenting on payment voucher-P. exhibit- 42 showing payment to Hannah Waithera Njau as Kshs.1,695,760- appearing to have been examined on 21/1/2010], he said:

“ ... I can't tell who authorized it, it appears to have been verified by Mr. Kibuna; I was familiar with Mr. Kibuna signature...”

114. On cross-examination he was challenged on his evidence that the voucher P. exhibit 42 was verified by Kibuna whose signature he was familiar with. He was given another document bearing the signature of Kibuna to compare (DMFI-2), he replied:

“...In the statement I stated that the voucher looked like it was signed by Kibuna and Muchina subject to their confirmation... [Shown MFI- 42], it looks like his signature [Shown DMFI-2]...I agree there are differences in the signatures appearing on MFI- 42 and DMFI- 2. If I were to look at the Payment Voucher again, I would not say that it was signed by Mr. Kibuna...”

On re-examination however, the witness maintained:

“ ... [Ref to MFI-42], it appears like it was signed by Mr. Kibuna, this is at the verification stage. I was familiar with his signature having worked with him for four years...”

115. Samuel Kuria Mugo (PW 8)– an accountant working in Ministry of Finance, Pension Department, Accounts Division testified that his duties were to approve payment vouchers among other duties.

116. He was paired with Peter Mwangi (PW 7) who was verifying the payment vouchers and while he was doing approvals. Files would come via the register of Mwangi/Mugo- P. exhibit 43. He confirmed he worked on the file APN/PC 222864 (P. exhibit 39) which he received from Mwangi on 5.2.2010. He confirmed the voucher details matched the particulars in G.P. 178 P – Exhibit -40. From the computation appendix (P. exhibit 41) , the lump sum assessed was Kshs.695, 760/= . The form had gone through the verification, audit and was authorized by the Directorate. After satisfying himself that the details were correct, he approved hard copy of the voucher on 5.2. 2010. He forwarded the physical file to the cash office using the register from Mwangi/Mugo and clicked on the system to send the alert to the cash office.

117. He testified that the receiving officer at the cash was Mr. Amian and this he could tell by looking at the signature because he was familiar with Amian’s signature having worked with him since 2007.

118. He was referred to P exhibit-42 the payment voucher in relation to Hannah Waithera Njau that had a lump sum amount of Kshs.1, 695, 760. He said he could not tell who examined this voucher, which showed it was examined on 21.1.2010. It indicated it was authorized on 23.1.2010 but he too was not familiar with the signature of whoever authorized it.

As for verifier’s signature on P.exhibit 42, however, he stated:

“ ... The voucher was also verified, the signature resembles that of Paul Kibuna, I was familiar with his signature having worked with him since 2007...”



119. The Chief Accountant at the Pensions Department, Gerald Mbaabu M'Ikunyua (P.W. 12) gave a descriptive account of the processes that took place in the accounts section after the assessed award was received at the Accounts Section from the Directorate. He said a payment voucher, at the Accounts Section level, could only be prepared based on the amount arrived at during assessment. Thereafter, the printed payment voucher would undergo voucher examination, authorization, verification and finally approval.
120. The next part in the process were the activities the cash office once examination, authorization, verification and approval was completed. The voucher and the entire pension file were moving together in all the stages. The first task on reaching the cash office was sorting out all the files received from accounting groups by organizing them into 3 broad categories:
- Those that were to be paid through commercial banks
 - Those that were to be paid through the Public Trustee
 - Those that were to be paid through Saccos and other non-financial institutions not represented in the clearing house (National Bank).
121. After the sorting, there was generation of payment schedules by the paying officer followed by checking and verification by going through the schedules to confirm that entries in the schedule were fully supported by payment voucher and other documents inside the files. If they were found to be in order, they would then be returned to the paying officer to commence the process of preparing the G-Pay.
- He stated:
- “...These schedules have a provision for signature by two accountants to signify that the claim paid is in accordance with the files which are attached and that the various items in that schedule are also fully supported...”
122. The last bit was G-Pay. According to P.W. 12, to reach here, all the verifications and risk controls required to be done by the Pension Department in respect to processing of pension terminated at the point the G-Pay process began. It served the purpose facilitating posting of the determined amount to a beneficiary. He stated:
- “...At that stage, all the controls, all the verifications and any processes and any risk of pension payment has been completed. So the cashier will now down load that information for schedules that have been completed in a flash...”
123. Referring to P. exhibit – 8, instruction requesting Electronic Transfer dated 5/2/2010 addressed to Deputy Director Banking, CBK dated 5.2.2010 instructing Central Bank to debit the Pensions Account with Kshs.137,671,390.30/= and credit 144 listed items with the indicated respective amounts, he confirmed it was delivered to CBK by Samuel Gitau Wainaina and the two authorized signatories had signed the letter, that is himself, G.M M'Kunyua and another officer, M.W. Mukunya.
124. Attached to this letter was a hard-copy of a G-PAY transaction dated 5.2.2010 which had been checked by C.B. Karari on 5.2.2010, verified by J.M. Simba on same date of 5.2.2010 and approved by G.M. M'IKinyua on 5.2.2010. The G- Pay was received and acknowledged by Central Bank on 5.2.2010.
125. The 2nd item in that G-Pay-P. Exhibit 8 was a payment through Kenya Commercial Bank ref. 7427 of Kshs.1,727,007.30/= credited to account No.115578650 whose beneficiary was Meshack Ayub Okemwa- Pension file no. APN/[PC/000221513](#)



126. He also testified that in the schedule Control Report for EFT schedule No. is 444112- P. exhibit 7 which was attached to the G-Pay, in item no. 4, the person paid was Meshack Ayub Okemwa through an account at Kenya Commercial Bank an amount of Kshs. 1,727,007.30. The date of EFT is 29.1.2010 and purpose was gratuity.
127. [With regard to P. exhibit- 50] it was a request for electronic transfer dated 22.12.2009 addressed to Deputy Director, banking, Central Bank of Kenya. It was requesting the bank to debit Pension Account No.010103051 with Kenya Shillings 346,228,821.55 by crediting 381 listed items with respective amounts in the attached summary. It was delivered by Paul Thuo Kibuna who also signed it to confirm delivery.
128. The request was signed J.M. Simba and G.M. M'IKinyua. It was received at Central bank on 22.12.2009.
129. The document accompanying the request was schedule Control Report for EFT schedule No.443997- P. exhibit 1, the next accompanying document is a schedule control report for EFT schedule No.443998 – P. exhibit -3).
130. The G.PAY dated 22.12.2009 was checked by C.B.Karari on 22.12.2009 verified by J. M. Simba on 22.12.2009 and approved by G.M. M'IKunyua on 22.12.2009.
131. At page 13 of the G.PAY item No.5, transaction number 4429; Kshs.2,023,578.60/= paid into Equity Bank account number 90100146679 for Simon Kamande Mwangi Pensioner file number APN/[PC/000220445](#).
132. He produced the forwarding letter & G.PAY schedule dated 22.12.2009 as P.Exh.50. Paul Thuo Kibuna (3rd accused) forwarded the G-Pay to Central Bank.
133. He also testified on P. exhibit-3, the schedule control report for EFT 443998 item No.17 showed the amount due to Simon Kamande Mwangi was Kshs.2,023,578.60/=.
134. [Concerning P. exhibit- 52] he testified it was the EFT request schedule analysis requesting 18 schedules to be encrypted with breakdown of indicated amounts per schedule. It was dated 22.12.2009. In the request, P. exhibit- 1 was not one those requested. item No.6 schedule was 443998 with gross amount of Kshs.22,806,472.70/=.
135. exhibit- 52 was checked at Cash Office by B.Karari who did the analysis at the cash office and endorsed that request on 23.12.2009.
136. The schedule in P. exhibit- 1 did not appear in EFT schedule analysis request signifying that the schedule control report number 443997-P. exhibit 1, its contents were changed and some of the items were moved to schedule 443998 of which authorization ought to have been sought. He explained:
- “ ...The schedule in MFI- 1 does not appear in EFT request. This would signify that schedule 443997 the content was changed/ substituted where some of the items moved to schedule 443998. That was not regular.
- Before such movement can be allowed, there could have been an official request from cash office to have one of the invalid schedules to be destroyed. There was no such request made, I don't see any...”
137. [He referred to G-PAY P. exhibit 53] a request for Electronic Transfer dated 23.2.2010 addressed to Deputy Director Banking, Central Bank of Kenya instructing Central Bank to debit CFS/Pensioner



- A/C No.0010103051 with kshs.131,389,210.45/= and credit the 57 listed items with respective amounts as per the attached summary and flash disk. The document was to be transmitted by Samuel Gitau Wainaina. It is signed by P.K. Nzuki and him, G.M. M'IKunyua. The annexure to that letter was the G- PAY dated 23.2.2010
138. Standard file inter-change which was created on 27.2.2010 and signed by two signatories G. Mbaabu M' IKinyua and B. Catherine Kalali. They were signed on 26.2.2010. The total amount for this G-Pay was Kshs.24,877,608.80/=. It was addressed to National Bank of Kenya.
 139. There was another attachment called schedule control report for EFT for schedule No.444201 a giving details of other stations. These were Saccos.
 140. There was another attachment schedule control report for EFT 444202 with details of the Saccos. They were all produced as P. exhibit - 53 [a] [b] [c] and [d] being:
 - (a) G- PAY
 - (b) Standard file Inter-change addressed NBK
 - (c) Schedule Control Report 444201
 - (d) Schedule Report No.444202
 141. [The G-PAY schedule-P. exhibit 53 (a) was fully authorized. It was checked by C.B. Karari on 23.1.2010, verified by M.W. Mukunya on 23.2.2010 and approved by G.M.IKunyua on 23.2.2010. It was received at Central Bank of Kenya on 24.2.2010.
 142. [At page 2 of the G.Pay schedule payment to National Bank of Kenya] under reference No.8848 for payment of Kshs.24,877,608.80/=.
 143. At Page 2 of G-PAY schedule under transaction reference No.8879 Kshs.27,057,609.00/= was paid to National Bank of Kenya Head Office.
 144. NBK was clearing the payments on behalf of pensioners on behalf of Saccos. For schedule Control No.444201 [P. exhibit -53[c] the were payments to various pensioners in different Saccos. With regard to P.exhibit- 53 [c], to Metropolitan Sacco; there was a payment made to Charles Mwathi Muniu for Kshs.2,354,797.70/=.
 145. The 2nd payment was for Hannah Waithira Njau and the amount was Kshs.1, 928,497/=.
 146. In relation to P. exhibit -53[d] schedule control report 444202 payment was made to Alice Wambui Kabugi for Kshs.1,923,925.50/= and third one was to Peter Mwangi Kariuki, amount being Kshs.1,541,224.50/=.
 147. On cross –examination, [he was challenged by Mr. Masinde to to confirm if he had an obligation to verify what he was signing before giving instruction to Central bank], he explained:

“ ... At that level, I was transmitting what had come on system with controls...Signing was not just ceremonial. I had no obligation to check correctness because the controls ended when the data was lifted from PMIS which had controls...”
 148. Samuel Kipyego Malakwen (P.W. 11) was a Chief Clerical Officer in the National Treasury-Pensions Department which he joined in 2001. He had worked in various sections, claims section, (where he would go round the Ministries collecting pension claims), he was then taken to assessment and in 2007 he was deployed to the Accounts Section where his work was printing of payment vouchers with



- his other colleagues who included Stephen Ekirapa, Joram Nyaga, E. Leware and Millicent [the 1st Accused]. He was eventually deployed to the cash office where he worked with Edward Amian (4th accused), Beatrice, Kalali, Wainaina, and others.
149. His main duty to confirm payments in the schedules against the payment vouchers. Edward Amian generated the payment schedules while he (Malakwen) was tasked with counter-checking against the payment vouchers.
 150. There was a register for controlling the schedules where, for instance, when Amiani generated a schedule, the control register would show the movement of these schedules which was recorded in every section (schedule numbering register-P. exhibit 2).
 151. In verifying, he testified that he would take the payment vouchers and tick them against the payment schedule.
 152. After confirming the payment vouchers against the schedules, he would then prepare schedule analysis report.
 153. This schedule analysis report was forwarded to the next officer who was working on G-PAY to enable him prepare the G-Pay schedule and forward it to Central Bank of Kenya [CBK] for payment.
 154. The cash office would finish with files when the verified schedule control reports were printed each schedule consisting of at most twenty files. The schedule control reports would then be forwarded to the next officer together with a schedule analysis report.
 155. Referring to schedule control report number- 444112 (P. exhibit 7) he testified that it was created on 29.1.2010; the total value of that schedule was Kshs.18,333,588.80/=. It was prepared by Mr. Amiani (the 4th accused). PW 11, Samuel Kipyego Malakwen confirmed he verified it. In item 4 of that schedule, Meshack Ayub Okemwa was to be paid through KCB an amount of Kshs.1,727,007.30/=.
 156. He prepared the EFT schedule analysis report dated 4.2.2010- P. exhibit – 51 which had 14 schedules with total value of Kshs.137,671,390.30/=. Item No.5 was schedule No.444112 dated 29.1.2010 (P. exhibit 7) with a value was Kshs.18, 333, 588, 80/=.
 157. After preparing the EFT schedule analysis report, he appended his signature and date and marked it together with files back to Mr. Amiani so that it could be forwarded to G-PAY. He signed it on 4.2.2010.
 158. [Referring to P. exhibit- 2 schedule numbering register at page 20, it indicated that schedule No.443998 – was prepared by Amiani on 27.11.2009. The value of schedule was Kshs.22,806,472.7/=.
 159. The Schedule Control Report Number 443998 (P. exhibit 3) for Equity Bank had 17 items to be paid through that schedule report of 15/11/2009.
 160. Item No.17 was Simon Kamande Mwangi who was to be paid through Equity Bank.
The amount to be paid out was kshs.2,023,578.6/=.
 161. Giving evidence on EFT request schedule analysis report dated 22.12.2009- P. exhibit 52, he stated there were 18 schedules in this analysis report. The total paid in this schedule analysis report (P. exhibit 52) was Kshs.346,228,821.55/=. Item No.6 in the schedule analysis report was schedule control report number 443998- P. exhibit 3, and the total for that particular schedule was kshs.22,806,472.70/=.
 162. The schedule had been marked 'ok' which meant it was examined and found okay for remitting to Central Bank of Kenya. Karari had examined it for it had her signature on it. It was received on 23.12.2009.



163. Testifying on payment voucher P. exhibit - 32 for Alice Wambui Kabugi pension file number APN/[PC/0000221553](#) where the amount paid as lump sum was Kshs.1, 823,530/=; He stated:
- “...The payment voucher was examined on 12.2.2010. On the face of the payment voucher, it was printed. I have a signature which looks like that of Milicent, the 1st accused. I worked with Milicent for 2 -3 years. I was familiar with her signature.It went for authorization on 14.2.2010. The authorization signature is that of Sophia the 2nd accused. I had worked with 2nd accused for about 3 years and I was familiar with her signature...”
164. The witness was referred to P. exhibit – 34 payment voucher for Peter Mwangi Kariuki Pension file number APN/[PC/0000222821](#), he said:
- “...On the face of the payment voucher – lump sum is indicated as Kshs.1,466, 024/=. It was printed and examined on 17.2.2010...as per signature; it looks like that of Millicent – 1st accused.
- It was authorized on 19.2.2010. It appears the authorizing signature is that of Sophia, accused 2...”
165. On being referred to P. exhibit -36; payment voucher for Charles Mwathi Muniu, he said:
- “...It is in relation to Pensioner, Charles Mwathi Muniu pensioner file No.APN/[PC/00001223557](#). The amount paid as lump sum as per voucher is kshs.2, 185,583/=. Payment voucher was printed and examined on 7.2.2010. I have signature like that of accused 1 as the examiner of that voucher.
- It was authorized on 10.2.2010. It was authorized via signature that looks like that used by accused 2. Verification was done via signature like that used by Mr. Kibuna the 3rd accused... I had worked with Kibuna for over 3 years and I was acquainted with his signature...”
166. Referring to P. exhibit 42 the payment voucher for Hannah Waithera Njau, Pension File No. APN/[PC/0000222864](#) for Kshs.1, 695,750/=, he said:
- “... It was printed and examined 21.1.2010. It was printed. I have a signature which resembles which was being used by Accused 1.
- It was authorized on 23.1.2010 vide signature which resemble one used by 2nd accused...”
167. Joseph Muthengi Simba (P.W. 10) – joined the Pension Department in August, 2008 and was deployed in Account Department, Authorization Section.
- He was moved to verification from authorization half a year later.
168. He testified that at verification and approval, he was with paired Mary Mukunya.
169. The person in charge of vote book was using the vote book control register – P. exhibit 48 (register for financial year 2009/2010) to allocate work to the verification and approval level. Pension file 221553 was captured under the P. exhibit 48-Vote Book in the entry of 31/12/2009 in respect of payment voucher number 2009-10-00-744 for Kshs. 958,278.50/=.



170. He further testified that in his group's allocation register (P. exhibit 49 at p.g. 96) where he was paired with Mary Mukunya; Pension file number 221553 was item 13 being amongst the files allocated and referred to him at the first level of verification on 17/2/2010.
171. He testified he verified the said voucher against the details in the pensioners file and having satisfied himself they were correct, signed the voucher, the file copy and the also signed the register on 19/2/2010 and passed it over to Mary with whom he was paired with to approve on that very day.
172. He asserted that Mary worked on the file that same day because there was Mary's signature which he was familiar with.
173. Upon signing the physical voucher, one logged in the system to approve and generate the alert.
174. On being referred to P exhibit- 32-payment voucher number 2009/10/007441 for Pensioner file number 221553-Alice Wambui Kabugi with net payable of kshs.1,958,278.50/=, he said:
- “...The payment voucher was examined on 12.2.2010. There is a signature appearing on examiner part. It is not familiar to me. It was authorized on 14.2.2010. I am not familiar with signature of Person authorizing. It is not indicated when it was verified. The signature of verifier is not mine. According to allocation file [MFI- 49] it is me who ought to have verified the payment voucher. I don't know who verified MFI-32 which I was to verify. I don't know who approved [MFI- 49] according to register it is supposed to have been approved by Mary Mukunya. The voucher was paid on 22.2.2010 in cash office...”
175. He was referred to the Vote Book Control Register- P. exhibit 48, at p.g.54 in respect of Pension file No.223557 for Charles Mwachu Muniu showing the entry was made on 5.2.2010. The payment voucher number was 2009/10/010806 with a gross payable of Kshs.1,440,635.20/=.
176. In the group allocation register- P. exhibit- 49 at page 91, Pension file No. 223557 showed that the file was allocated to him on 3.2.2010 being item No.74 in that day's list. He testified that he verified the voucher details against the Pensioner's file on 5.2.2010 then passed it to Mugo for approval and was forwarded to the cash office on the same day. On why it was to Mugo and not Mary who he was paired, he explained:
- “...Normally, when the officer who one is paired with is not in or is allocated other duties, you take it to another officer who is of the same level and would forward it to the next level. I had worked with Mugo for more than a year and I was familiar with his signature. The file left cash office the same day. On the on-line system, I equally approved it and it went on to the next level...”
177. Referred to P. exhibit – 36- payment voucher number 2009-10-010806 for pensioner No.22357 - Charles Mwachu Muniu with an amount of Kshs.2,354,797.70/=, he said:
- “... The voucher was examined on 7.2.2010. I am not familiar with this examiner's signature. I am also not familiar with approver's signature. It was authorized on 10.2.2010. I don't know who verified the voucher...”
- He then added after referring to allocation register P. exhibit 49;
- “...According to my register, the person who should have verified it ought to have been me. It is not me who verified the voucher. I don't know who approved this voucher. I am not familiar with the signature. According to the register, the person indicated as having



approved the claim is Mr. Mugo. The signature in the voucher is not Mugo's...The payment voucher was paid out on 22.2.2010..."

178. 15, Leonard Kimutai Kipsaina, the Manager in-charge of Banking at Central Bank of Kenya. He was in charge of approving and facilitating transfer of Government payments through Commercial Banks. Each Ministry maintained an account with Central Bank as well as Commercial Banks.
179. The G-PAY process validation process involved at least 4 officers at Central Bank of Kenya.
180. Documents delivered by Ministry were verified to confirm if signatures were in accord with the mandate held at CBK for officers mandated by the Ministry. Uploaded of the encrypted contents of flash disk into CBK Internal G-PAY System by another CBK officer to confirm the contents agreed with the hard copies delivered from the Ministry. The third process was for the officer to process the instructions for transmission to commercial bank. The officer would then approve the transactions that are queuing in the system bringing the processes to completion. The final stage is approval stage by the Manager.
181. He confirmed that instructions were duly received, verified, validated and acted upon by the Central Bank in relation to the following G-Pay instruction requests:
182. Letter of instruction on G-PAY transaction request dated 29.1.2010 requesting for electronic transfer by debiting the Pensions account at Central Bank of Kenya by Kshs. 235, 110, 389.85 and crediting 239 listed items in the attached summary and flash disk that was received by CBK on 1/2/2010. It had supporting schedules dated 29.1.2010 (P. exhibit 55, 55 (a) & (b))
183. Letter of instructions dated 24/12/2010 requesting to debit Pensions Account No.0010103051 with Kshs.131,389,210.45/= and credit 57 listed items with respective amounts as per G- Pay schedule dated 23/2/2010 and flash disk (P. exhibit 56, 56 (a) & (b)).
184. Letter of instruction dated 5/2/2010 seeking electronic transfer of Kshs. 137, 671, 590.30 that by the attached G-Pay schedule and flash disc (P. exhibit 59, 59 (a) & (b)).

To confirm that the instructions for transfers were done by CBK, he exhibited the following:

CBK transmission report dated 25.2.2010 – P. exhibit - 60

RTGS transaction schedule dated 2.2.2010 – P. exhibit- 61

RTGS Transaction schedule dated 8.2.2010 – P. exhibit- 62

RTGS transmission schedule dated 24.12.2009 – P. exhibit- 63

185. Two CBK bank officers Peter Kiogora Ibara Kareria (P.W.13) and P.W. 16, Rose Nyalwenye Ouma (P.W.16) testified before this Court and confirmed that they participated in verifying these requests for transfer of funds by ensuring the accompanying schedules were properly endorsed by officers authorized by the Pensions Department, instruction letters plus the G-Pay schedules were signed by the mandated signatories held by CBK, and the amounts in the attached schedules tallied with the information contained in flash disc after uploading and decrypting from the CBK computer, hence recommending for the transmission of payment to the Manager, P.W. 15; Mr. Leonard Kimutai Kipsaina.



186. On cross-examination CBK Officials were unanimous that if the Ministry gave wrong instructions to CBK to transfer of funds, it was the Ministry officials who should be held to accountable. P.W. 15 stated in response to a question by Mr. Masinde:

“...It would be Ministry of client giving Central Bank erroneous instructions that would be liable...”

187. Meshack Ayub Okemwa (PW 17) retired from teaching in September, 2008. Towards the end of 2009, he was paid his pension of about 1.7 Million Shillings through his KCB Account at Kisii Branch. No prior communication had been made to him about the money. He found the money in his account during one of his many regular visits to check for his pension because he was expecting it.

188. In his KCB bank account statement for account number -1115578650- which was for the period between 7.12.2009 and 8/2/2010- P. exhibit 64 he confirmed a credit entry on 8/2/2010 in form of Inward swift CFS Pension – Kshs.1,727,007.30/= was reflected.

189. He stated he knew nobody in Pensions Department and no one assisted him to process his pension. He also stated his monthly payments were stopped in October, 2010.

190. Simon Kamande Mwangi (P.W. 23) retired from teaching in 2008 after having been a teacher from 1st May, 1976.

191. He waited for processing of his pension but there was delay and even towards the end of 2009, there was nothing.

192. He met his friend, one Robert Muchoki who had also retired and asked him if he knew anybody in Pension who could assist him.

193. Together they visited Pensions Department and met a lady by the name Mrs. Wakaruga who was working in the dispatch section of the Department of Pension. She was explained Kamande’s problem by Muchoki and she promised to push for him to get his pension paid. Around December, 2009 pension was paid.

194. Referring to his Bank Statement for period between 1/9/2009 to 3/2/2011– P. exhibit – 67 he confirmed that the money that came in on 24.12.2009 was Kshs.2, 023,578.60/= .

195. He then called Mr. Muchoki inform him the money he had received was in excess of the money he had expected. According to Kamade (PW 23), Muchoki told me the money on top was for Mrs Wakaruga who had assisted him at Pensions.

196. They thus agreed on the date when they would go and give Wakaruga her money. On 30.12.2009, they traveled to Equity Bank, Thika. He withdrew Kshs.805, 000/= and put it in an envelope then gave it to Muchoki. They then went and met Wakaruga who was in company of another lady inside a car. He and Muchoki entered that vehicle and drove to Tuskys parking yard. He left them there and went his away.

197. He produced his bank statement for period between 1.9.2009 – 3.2.2011 –P.EXH 67

On cross-examination by Mr. Masinde, he said:

“...Wakaruga is not among the two ladies 1st and 2nd accused. I believe even the court know she passed away. I can’t recall the year but it is a fact she died. If I say the date I would be lying. I gave her the money in December, 2009. Their family home is near our home. It is a person I knew. Robert Muchoki is still alive. Wakaruga was in the car with some other lady. It was that other lady who was driving. I cannot identify the one who was driving. I withdrew



Kshs.800, 000/= and gave Wakaruga. The ksh200, 000. I used together with what was mine. We never discussed the Kshs. 200,000/= over and above my Pension that was in my account.

Wakaruga explained that the money which was over my Pension did not belong to me. About Kshs.200, 000/= that remained, I spent. I cannot understand what was happening to me. What happened was like a miracle... To me, it looked like it was her who had sent that money. She used to work at dispatch, in Pension Department...”

198. Peter Mwangi Kariuki (PW 27) retired as a teacher 2008 and started following up his pension with TSC in 2009. In the year 2010, he was informed that his file was taken to Treasury for processing of his pension.
199. It is not until December, 2012 when he received his pension which was slightly over Kshs.500, 000/-. It was paid through his account at Metropolitan Sacco. He denied ever receiving an amount of Kshs. 1,466,024/= indicated in payment voucher [P- Exhibit 34] which was stamped “PAID” on 22.2.2010.
200. Charles Mwathi Muniu (P.W. 31) retired from teaching in August 2008 and submitted all the requisite documents including his retirement letter to the DEO for formal transmission to TSC.
201. On 10/9/2012, he received a letter by the Director of Pensions- P. exhibit 87
202. Informing his pension under pension file number APN/PC 0000223557 had been processed and a cheque of Kshs. 1,354,647.70 had been sent to his bank account at Metropolitan Teachers Sacco. He produced his Sacco Account Statement at Metropolitan Teachers Sacco A/C No 40050200006277900- P. exhibit 88 showing balance of 1,354, 517.70 as at 9/11/2012.
203. Alice Wambui Kabugi (P.W. 32) retired as a teacher in August, 2008. She started following up her pension with the Treasury in 2009 but years 2010 and 2011 passed without her getting paid.
204. She sought the help from her local MP- by then Hon. William Kabogo who promised to take up the matter with Parliament. It was after the matter was discussed in Parliament that her pension was processed and paid in 2012. It was about Kshs. 900,000/-.
205. She denied ever receiving any payment in the year 2010 when showed a cash office stamp with word “PAID on 22/2/2010” appearing in documents inside her pension file APN/PC/227553- P. exhibit 15. She insisted that the letter dated 16/3/2010 recalling payments to Metropolitan Teachers Sacco was not brought to her attention by the Sacco despite her name appearing on it as item 4.
206. Benson Nganga Mwangi (PW 25) the Head of Finance and also the Deputy Chief Executive Officer with Metropolitan National Sacco.
207. He testified that on 2.3.2010 the National Bank of Kenya sent a total of Kshs.8, 612,411.70 to the Sacco Account at Co-operative Bank Account No.01120063114802 at Kiambu Branch. The Sacco was not sent any credit advice hence the money could not be applied to any of beneficiaries account since they were not identified.
208. He produced the Bank Statement extract showing credit of Kshs.8, 612,411.70 dated 2.3.2010 as P. exhibit- 78.
209. On 16.3.2010, National Bank of Kenya recalled the said amount received via its letter 16.3.2010 (P. exhibit 79) in which it indicated it was recalling Gratuity Pensions sent via EFT on 2.3.2010 for Kshs.8, 612,411.70 in respect of

(1) Anne Waithera Njau – kshs. 1,928,347.00/=.



- (2) Charles Mwathi Muniu Kshs.2, 354, 647.70
 - (3) Peter Mwangi Kariuki kshs.1, 541,074.50
 - (4) Alice Wambui Kabugi kshs.1, 923,715.50
 - (5) Stephen M. Njoroge Kshs.844, 567.00
210. On receipt of those instructions, The Sacco returned the total amount to National Bank of Kenya payroll Service vide RTGS on 31.3.2010 as its letter- P. exhibit 80.
 211. Pascal Mweu (P.W.29) an Assistant Director Investigation at EACC who was at the time he carried out initial investigations into this case, a forensic investigator in the preliminary investigations division. That time, his work was to investigate reported matters with a view to enabling the Commission to make a decision on whether the matter is one that could be taken up by Commission, referred to other agencies, recommended for administrative action or closed under Section 25 of *Anti-Corruption and Economic Crimes Act* no. of 3 of 2013.
 212. On 25/11/2010, an allegation was received by the Commission that between July 2009 and November 2010, the Pensions Department under Treasury had fraudulently made payments of more than 8 million through collusion between retirees and officers working in government departments. At the time of that report, only details of two suspected cases were provided namely pensioner number APN/*PC/2204*45 Simon Kamande and APN/PC/ 221513 Ayub Meshack Okemwa.
 213. On 5/1/2011, he wrote a letter to Pension Department requesting for documents used to process pension payments for the period between July 2009 and December 2010.
 214. The Director Pension Department responded through a letter dated 13/1/2011 ref. APN/168/03(140) - P. exhibit-108 and forwarded the requisite documents.
 215. On 6/1/2011, he also wrote to Teachers Service Commission and requested for personal employment files for teachers who had retired between July, 2009 and December, 2010 with specific focus on the files of Simon Kamande Mwangi and Meshack Ayub Okemwa.
 216. TSC employee availed other files for its employess who had retired during that period, they included: Hanah Waithera Njau, Charles Mwathi Muniu, Peter Mwangi Kariuki, Anne Wambui Kabugi, Peter Sankaine Nkiriri, Michael Kariuki Mwaura, Mary Jacinta Wambui Njoroge and Mary Waceke Kimani.
 217. In the TSC files of Simon Kamande Mwangi and Meshack Ayub Okemwa he was able to retrieve their G. P. 178 forms that showed the years of service and salary at the time of retirement. This also applied for the other files provided.
 218. Upon analyzing payment schedules vis a vis other documents relied on to process the pension payment for Simon Kamande, he confirmed Simon Kamande who was supposed to be paid under schedule 444997-P. exhibit 1, was paid through a substituted schedule 444998- P. exhibit 3 where his entitlement had been increased by I million shillings.
 219. The pension payment to Meshack Ayub Okemwa was supposed to be Kshs. 727,007.30 going by what had been assessed but according to schedule no 444112- P. exhibit 7; the pensioner was paid Kshs 1,727,007.30.
 220. Similar trend was unearthed in pension payments to- Hannah Waithera Njau, Charles Mwathi Muniu, Peter Mwangi Kariuki, Anna Wambui Kabugi and Peter Sankaine Nkiriri.



221. On the basis of this preliminary analysis, he recommended a full investigations be conducted and subsequently handed over file and all the documents to Gideon Mokaya of forensic investigation at Forensic investigation division on 13/4/2011 to carry on.
222. He was cross-examined extensively on the findings arrived at in his preliminary report- “KACC/P1/ Inquiry/156/10 on Allegations of Embezzlement of Public funds at Pension Department.”
223. Mr. Masinde for 1st and 2nd accused referred him to the following excerpts of the report and sought his comment:

“Investigation done through Safaricom on mobile number 0721428006 a number that Simon Kamande Mwangi used to contact Wakaruga shows that he registered owner is Lucy Nyakeru Wakamuye who works in dispatch section of Pension department. Court investigation, identified the said lady as Joyce Gathogo working at dispatch Section of pension department”

She is the lady who accompanied Lucy Wakaruga to Thika...”

“...That for fraudulent payment of 9,810,238.00 by officer at pension department in collusion with certain pensioners be subjected to a full forensic investigation with a view to charging Edward Amiani, Sammy Muchina, Sammy Malakweni, Lucy Nyakeru Karuga, Joyce Gathogo and others for possible offences of forgery, uttering false documents, fraudulent false accounting and other offences under section 45 of ACECA...”

“...Signature in payment voucher on payments through Metropolitan Teachers Sacco appears to be forgery since they are not the obtained signatures of Millicent Mungai, Sophia Mugwe and Sammy Muchina who are said to have examined and appraised the payment...”

224. In response however, Pascal Mweu (P.W. 29) explained that his report was not conclusive but was subject to the final comprehensive investigation report. He said:

“...At preliminary, I may not even record statements but I can interview people and form an opinion. Where there is changing of amounts, there could be elements of forgery or uttering of false documents...”

225. When 3rd accused suggested to him that his recommendations in the report were not acted upon because the people he had singled out and recommended to be charged were not, but in contrast different people were instead charged, he explained:

“...the investigating officer was not bound to my recommendations and he carried out full investigation and was thus able to determine who is culpable and who is not culpable. Number 3, it depends on threshold of evidence to recommend charging and sustaining those charges. It is not true that investigations by EACC were shoddy...”

And to Mr. Onsongo, he stated:

“...I was merely setting a framework to guide the investigators...”



226. During re-examination by Ms. Christine Gakobo for the prosecution, he clarified the observation he had made on the signatures “not being the true obtained signatures of the people he mentioned”, he stated:

“... (In covering report page 7 no. 2) it is true I find that some of the signatures in payments vouchers appear to be forgeries.

As an investigator, you find a document is a forgery once it is subjected to document examination.

By that time I concluded preliminary investigation, I had not subjected any of the documents to a document examiner...”

227. Jacob Oduor (PW 28) a forensic document examiner with EACC testified that by the time of his testimony in court, he had 9 years of experience as a document examiner having also previously worked with the Directorate Criminal Investigation in the same field. His academic qualifications includes a bachelor of education arts degree from Kenyatta University, had been trained as a forensic document examiner at the DCI forensic laboratory, underwent training at National Ribat University Forensic Evidence in Khartoum Sudan, Foster and Freeman Equipment Company in the United Kingdom as well as Reguaa Forensic Science Systems based in Republic of Latvia, East Europe.

228. He testified on 15/6/2011 from Gideon Mokaya of EACC he received among others the following documents for forensic examination as to the handwriting and signatures.

A1- Payment voucher for Ms. Hannah Waithera Njeri (P. exhibit 42).

A2- Payment voucher for Peter Mwangi Kariuki – (P. exhibit- 34)

A3- Payment voucher for Charles Mwathi Muniu (P. exhibit 35)

A4- Payment voucher for Alice Wambui Kabugi (P. exhibit 32)

A9- Schedule numbering register of cash office for year 2009/2010 (P. exhibit 2)

229. He was also provided with specimen handwriting and signatures of, Millicent Weruma Mugai (P. exhibit 87, a - f); Sophie Wanja Mugwe (P. exhibit 88, a - d); Paul Thuo Kibuna (P. exhibit 89, a- f); Sammy Kihanyo Muchina (P. exhibit – 90, a to f); Edward Amiani Ongati (P. exhibit 95, a -e);Samuel Kibyego Malakwen (P. exhibit 96, a -d); among others.

230. Equally submitted for forensic examination purposes were their known handwritings and signatures.

231. The exhibits were submitted through exhibit memo form which he produced as P. exhibit 106.

232. After per the as the requests in the exhibit memo form, he came up with the following findings:

233. The signature marked ‘1’ appearing in the payment vouchers for Hannah Waithera Njau, Peter Mwangi Kariuki, Charles Mwathi Muniu and Alice Wambui Kabugi –P. exhibits 42, 34, 36 and 32) was compared with the known handwriting and signature of Millicent Weruma Mugai (P. exhibit 98) and her specimen handwriting and signatures (P. exhibit 87, a to f); the result was that the questioned signatures and specimen signatures were similar and indistinguishable and the conclusion was they were made by same author.

234. The handwriting and signatures in the payment vouchers for Hannah Waithera Njau, Peter Mwangi Kariuki, Charles Mwathi Muniu and Alice Wambui Kabugi –P. exhibits 42, 34, 35 and 32) which was indicated by arrow in red ink “marked ‘2’ was compared with the known handwriting and signature of Sophie Wanja Mugwe (P. exhibit 99) as well her specimen handwriting and signatures- (P. exhibit



88, a to d); the finding was that the handwriting and signatures were similar. He noted similarities in specific letters and figures e.g. Capital 'S' 'T' 'N' 'U' 'G' 'VII' 'E' and figures 9, 2 and 0 hence made by the same author.

235. The signature in the payment vouchers for Hannah Waithera Njau, Peter Mwangi Kariuki, Charles Mwathi Muniu and Alice Wambui Kabugi –P. exhibits 42, 34, 35 and 32) which was indicated by arrows in red and marked '3' was compared with known signature of Paul Thuo Kibuna (P. exhibit 3) as well as his specimen handwriting and signatures- (P. exhibit 89, a to f); the finding was that they were similar and indistinguishable meaning they were made by one person.
236. When schedule numbering register for cash office 2009/2010- P. exhibit 2 page 20 serial no. 443997, 443998,444010,444011,444012 circled in pencil were compared with known signatures of Edward Amian Ongati pointed by arrow in pencil in P. exhibit 104 and also with his specimen signatures- P. exhibit 95, a- e they were found to be similar and made by the same person
237. The document examiner produced the forensic examination report dated on 9/9/2011 as P. exhibit 107 and the exhibit memo form as P. exhibit 106.
238. On cross-examination he conceded that he neither personally took the specimen signatures nor did he see the accused persons sign.

In concluding his report, he remarked on P. exhibit 107:

“...My opinion is based on the following peculiar characteristics in the writing and signatures that provided me with evidence of authorship, character initialization and the terminal strokes, character construction and their arrangement, natural pen lifts, pen pressure and ink flow, character spacing and alignment, writing quality and general resemblance...”

239. Gideon Mokaya (PW 33) worked with EACC between 2007 and 2015 as financial forensic investigator. He testified that the investigation concerned an alleged fraud in which pensioners were being paid amounts in excess of what the Director of the Pensions had assessed and awarded. He took over that investigation from Pascal Mweu (PW 29) of Preliminary Investigation Department who by then had done a preliminary investigation. He was handed over the documents which had been in Pascal Mweu's custody.
240. He subsequently filed Miscellaneous Criminal Application Numbers 160/ 2011, 161/2011 (P. exhibits- 117 & 118) and applied for warrant to obtain bank statements and account opening documents of Peter Mwangi Kariuki, Alice Wambui Kabiru, Annah Waithera Njau, Charles Mwathi Muriu, Peter Nkiriri and Meshack Ayub Okemwa.
241. He also interacted with the consultant of the Pension Information Management System that had been installed by Pensions Department; a Mr. Rakesh Kumar. From that he learnt that the new pension information management system audit trail had been disabled by the Consultant hence user activities of the persons who transacted through the system could not be tracked by the system. He also interrogated the ICT Manager, Mr. Andrew Opiyo (PW 3) who re-affirmed the position. He posited:

“...The lack of this audit trail system made workflow sheet produced by the system to be questionable....My interaction with Rakesh indicated that these work flows might not have indicated actual users at the transaction level and it is premised on that discussion with system consistent that I opted to use manual system on paper trail rather than IT system that had been compromised by lack of audit trail system.



I therefore did not rely on PExh 9 (a) and (b) in making my findings in the investigation process...”

242. His Investigation thus relied on the manual process that was running parallel to the computerized system; He explained:

“...Lucky enough, for purposes of these investigations the IT system was running concurrently with manual system so that all transactions in the system could be captured manually...”

243. He obtained documents in relation to the pension payments of: Mwangi Kamande Simon, Okemwa Meshack Ayub, Anna Waithera Njau, Peter Mwangi Kariuki, Alice Wambui Kabugi and Charles Mwathi Muniu.

244. After going through them, he was able to establish that genuine assessed payments would subsequently be altered at the point of voucher processing whereby instead of basing them pension assessed and awarded by the Director of Pension, the amounts were being inflated in payment vouchers then progressed to generate schedules control reports that were being used to prepare the G-Pays that enabled transmission of funds to the retirees accounts.

245. In respect to Anna Waithera Njau, Peter Mwangi Kariuki, Alice Wambui Kabugi and Charles Mwathi Muniu, he was able to get pension computation appendix forms, the payment vouchers with the inflated amounts, their TSC files and all the relevant registers used to document payment process by the officers, He took specimen samples of the accused and their known signatures and forwarded them to the examiner to assist in forensically determining the people behind the processing of the respective fraudulent vouchers by examining, authorizing, verifying and approving them.

246. For Simon Kamande Mwangi and Meshack Ayub Okemwa whose payment vouchers and pension files could not be obtained the schedule control reports used to process the payment through G-pay, the register documenting movement of the schedule (schedule numbering register), the requisite G-Pays that enabled transfer of money to the pensioners account and also obtained a search warrant to investigate the pensioners' accounts which enabled him to obtain their statement of accounts. He also requested for their employment files from TSC. From the system print outs of vouchers prepared based correct pension assessments in respect of the two pensioners were retrieved. He compiled the evidence and recommended charges against the accused persons.

247. On cross-examination by Mr. Masinde for the 1st and 2nd accused he admitted being aware of a finding by Mr. Pascal Mweu (P.W. 28) in the preliminary report which stated that:

“...Signature in payment voucher on payments through Metropolitan Teachers Sacco appears to be forgery since they are not the true obtained signatures of Millicent Mugai, Sophia Mugwe and Sammy Muchina who are said to have examined and appraised the payment...”

Which in response, he explained:

“...He suspected the signatures of not belonging to them. It was preliminary finding that was to be subjected to further investigation it would include bringing in a handwriting expert... I obtained the samples for all accused parties and sample known signatures from pension department before they went for examination. My role was to get the known signatures and questioned signatures and document examiner was to do his job...”



248. Asked why he did not recommend any charges against the two ladies whom Pascal Mweu had established indeed went to Thika to collect Kshs. 800,000/- from one the pensioners, P.W. 23, Simon Kamande Mwangi, one of them being Lucy Wakaruga, he stated:

“...I had interaction with Lucy Karuga supposed recipient of Kshs 800,000/= and Simon Kamande as well the person who gave the money. He alleged he gave Kshs 800,000/= to Lucy Karuga. Karuga denied she received the money. There was no evidence to show the exchange of money.

The only evidence was withdrawal of kshs 800,000/= from the bank.

Subsequently, before the matter was brought to court, Lucy Wakarunga passed on. We could not place a dead person in charge sheet...”

249. The 3rd accused insisted to the Investigating Officer, PW 34 that the date in the payment voucher of Annah Waithera Njau being 22/2/2010, he could not have possibly been available to deal with this payment voucher because between 21/2/2010 to 26/2/2010, he was out of office attending a training at Kenya Institute of Administration, The I.O, Mr. Gideon Mokaya (PW 33) replied:

“...My comment is that on the date when voucher signed is not shown in payment voucher. What is there is stamp paid on 22/2/2010...”

250. Asked by Mr. Onsongo why he had not preferred charges against the 4th accused in the other counts yet he had also printed schedule control reports where those payments were made preferring to charge him only in respect of payment for two schedules as per counts 13 & 14; he explained:

“...With respect to the two which payment vouchers disappeared, is because at cash office level, there was an initial schedule that indicated lower amount and then a modified schedule which indicated higher amount. Register in cash office indicated these schedules were prepared by Edward Amian...”

251. After the Close of the prosecution case, all the accused persons were placed on their defence following the ruling of this court on 8/2/2019. They all elected to give sworn evidence in their defences.

252. The 1st accused, Millicent Weruma Mugai (D.W. 1) stated that she was seconded to Treasury and deployed to the Pensions Department from the defunct Electoral Commission of Kenya in 2009 but was confirmed there on 23/7/2010.

253. At the time the issues relating to this case arose, she was serving in the New Cases section under the Accounts Unit. Her work involved voucher examination in respect of files allocated by the Directorate Section.

254. She explained when files came from the Directorate; they were being kept in a room under the control of the officer in charge of the section. The officer in charge of the section would then allocate the files. In day she could get at least 20 files. She testified that there was no register of allocation to capture files each was allocated. However, each Officer had a personal register where upon working on the files, he/she would record the pension number, the date it was worked on and any remark pertaining to that particular pension file.

255. Responding to allegations in count 1 in relation to her handling and examining a payment voucher in respect of a pensioner, Alice Wambui Kabugi (Pension File Number P/C 221553); she explained that the forged voucher purported she worked on it on 12/2/2010. In her register, the date in question



was there but that particular pensioner's file was not in the list of files handled by her on that day. The register showed she had worked on that particular file on 11/2/2010.

256. She testified that she could demonstrate whatever she had done on the file on the date it went to her. She explained:

“...We used to have a vote book register at the verification level that showed the date, file number, the payment voucher number and the amount paid. (Referring to P. exhibit 48) It is the vote book I am talking about. What I want to show the court is that voucher-221553 count one for Alice Wambui Kabugi – Voucher number 2009-10 00 7441 the amount paid was Kshs. 958,278.05...these details were filled at verification level, 2 levels above examination where the voucher was being taken to cash office for payment. My level was level 1, Examination. It was filled on 31/12/2009. The forged voucher where my signature was appended was 12/2/2010. I had worked on the file on 11/2/2010.”

Noting the apparent mix up in the dates she clarified thus:

“...When a file has a problem, at any level, it could be returned back for amendment and a new voucher is prepared. It was after amendment that I worked on the file...”

257. Her Advocate who was leading her in evidence in chief asked her if the file for Alice Kabugi had a problem and she answered affirmatively explaining as follows:

“Yes, according to the analysis, the file seemed to be having a problem. Since the old voucher was not/is not in the pensioner's file, I am not in a position to tell the court what the problem was...”

258. She denied the signature in the payment voucher- P. exhibit 42 belonged to her. She stated that there was no way she would have worked on the voucher on 11/2/2010; record the file in the register but in the voucher record a date of 12/2/2010.

259. She explained that amendment could be effected at any level if a problem was detected as long as ICT was involved. She denied any involvement in the enhancement of the amount in the payment voucher. She said the data state flow comparison (P. exhibit 10) did not show her as having been involved.

260. Responding to testimony of PW 11, Samuel Malakwen that the signature on P. exhibit 32 was hers; she replied:

“...Samuel Malakwen was before this court and testified that the signature looks like mine. By stating ‘looks like’ he was not sure having worked with him that it was my signature. I agree with him that it looks like mine and looking at it, it also ‘looks like’ but is not my signature...”

261. Reacting to the evidence of the document examiner about the signature, she asserted:

“...PW 28, document examiner, Jacob Oduor, I saw him for the first time in this court. He himself did not take any signatures from me...”

262. She concurred with the preliminary investigation of Pascal Mweu that suggested that her signature appeared to have been forged.



263. With respect to the payment voucher of the pensioner, Charles Mwathi Muniu (P. exhibit 34) she stated that she never worked on that file. She said the date on that voucher is 7/2/2010, which was a Sunday. She never worked on Sundays. She denied that the signature on the voucher was hers.

264. She equally stated that she never worked on the voucher for Peter Mwangi Kariuki and the signature on the voucher dated 17/2/2010 was not hers. She said:

“...The reason I say I never worked on it, the correct voucher that was worked on at the authorization level –level above me was authorized on 12/2/2010. There is no way a voucher could be authorized before being examined...”

She went on:

“...This date of 12/2/2010, I got from 2nd accused Sophia who told me she worked on the voucher on 12/2/2010...”

265. For the voucher of the pensioner- Hannah Waithera Njau (P. exhibit 42) she said that she did not sign it. She explained:

“...The reason is...Sophia Mugwe (2nd Accused) told me she worked on the correct voucher according to the photocopy of the register on 3/2/2010. The second accused was at authorization level. The authorization level was a level above the examiner. She authorized on 3/2/2010. The forged voucher at the examination level where my signature is forged the date appended was 21/1/2010...”

266. For workflows she relied on P. exhibit 9 (a) and (b) in which she pointed out that the file for Alice Wambui Kabugi- Payment voucher number 2009-10-007441, voucher date 10/5/2009, it indicated an amount of 1,923,925 as modified sum and according to the workflow, it was created by J. Nyagah. She explained:

“...’created by’, this workflow was to show where inflated amount was done...”

267. For Count IV-Charles Mwathi Muniu, Payment voucher number P.V. 2009-10-010806- modified amount of Kshs. 2,354,797.70; she stated according to the workflow, it was created by S. Ekirapa

268. For Count VII- Peter Kariuki Mwangi- P/C 222821-payment voucher P.V. 2009-10-010581 modified sum 1,541,224.50, the workflow showed it was created by Muturi.

269. For Hannah Waithera Njau- P/C 222864, payment voucher P.V 2009-10-010249, modified amount of 1,928,497; it was created by S. Ekirapa, according to the workflow.

270. Consequently, she contended that the workflow- P. exhibit 9 (a) and (b) did not implicate her in any way. She further explained that she did not have the secret passwords of any of those officers to enable her access the system using their user accounts to make the changes.

271. She also asserted that she had not interacted with any of those pensioners in any way.



272. On Cross-Examination by Miss Christine Gakobo for the state, she was questioned on the completeness of the copy of her register (D. MFI-6) she was seeking to rely on, she answered:

“...It is a copy of the register; it contains part of my work, not all of it. The rest is in the original register- the investigating officer should tell where he got the copy from. It was supplied to the Investigating Officer as part of documents served on me...”

273. She was referred to letter dated 14.6.2012 from EACC to her Advocate Boniface Maside in reference to Anti-Corruption Case Number 6 of 2012 Millicent Weruma & Others indicating the exhibits that were availed to her Advocate in which her advocate acknowledged receipt 32 witness statements and 53 copies of exhibits from EACC on 5.6.2012. Out of the listed exhibits received, it was not among them, she said:

“...It does not have any marking marked B55. From the documents in the list supplied, they do have a B-marking...”

274. Asked where in her statement to EACC she disclosed the existence of her personal register, she said:

“...I did not record that...”

275. She was also shown specimen signatures P. exhibit 87 (a) to (f) and asked if she provided the same to the Investigating Officer, and admitted that she did.

276. The 2nd accused, Sophie Wanja Mugwe (DW 2) testified that she was an accountant II in Pensions Department where she had worked since the year 2002.

277. She was working in the New Cases unit within the Accounts Section. Her duty was to authorize payment vouchers coming to from the voucher preparation unit.

278. In response to Count II, she stated that she did not authorize payment voucher- P. exhibit 32 for Alice Wambui Kabugi as any work going to her was assigned by her immediate supervisor through a register that captured whatever was allocated. She said this register was kept by her supervisor. She denied the signature in P. exhibit 32 was hers. She said although Malakwen (PW 11) had indicated in his evidence in chief that that the signature looked like hers, he had changed that position when cross-examined to say he wasn't sure it was her signature.

279. With regard to payment voucher- P. Exhibit 36 for Charles Mwathi Muniu, the subject matter of count IV; she stated that it was not her signature and insisted that her signature was forged. She said,

“...It might look like mine but is not my signature...”

280. With respect to count VIII- which relates to payment voucher for Peter Mwangi Kariuki-P. exhibit 34, she conceded that from the extract of her register, this file APN/PC 222821 was allocated to her on 12/2/2010 and she worked on it; then it went to vote book on 15/2/2010 with the correct amount of 567,149 yet P. exhibit 34 alleges she worked on the voucher on 19/2/2010. She swore that on 19/2/2010, she only worked on five files and Peter Kariuki's file was not amongst them. She protested:

“ There is no way I would have passed a correct voucher on 12/2/2010 and then on 19/2/2010 pass an irregular voucher from the same file...”

281. In Count XI, which relates to payment voucher- P. exhibit 42 for Ann Waithera Njau, she also testified that the signature in the payment voucher was not hers. Nevertheless, she explained that on 3/2/2010;



pensioner file number APN/PC 222864 was assigned to her which she worked on and handed over to the vote book with the correct amount captured in the vote book-P. Exhibit 48 as Kshs. 952,073=. P. exhibit 42, the voucher with inflated amount for Hannah Waithera Njau was reflected as having allegedly been worked on by her on 23/1/2010. She lamented:

“...There was no way I could sign a voucher with incorrect amount and thereafter sign one with correct amount...”

282. Just like the 1st accused, she sought to rely on the workflow- P. exhibit 9 a & b to demonstrate her non-involvement in these fraudulent voucher modifications. She also asked the Court to take into account the results of the preliminary investigation done by Pascal Mweu (PW 2) as forming part of her defence. Confirming she had discussed with 1st accused, Millicent about the files the 1st accused mentioned in her defence; she said:

“...Millicent in her evidence mentioned what I told her on the dates in respect of file of Hannah Waithera Njau PC 222864. We had discussed that payment with her which I had passed the correct amount to vote book on 3.2.2010 and another one on 3.2.2010 of Peter Mwangi Kariuki APN/PC 222821. When we are co-accused with forgeries we never took part in, we found it necessary yesterday in the morning to discuss about the forged vouchers in question. That is why Millicent talked about them...”

283. On cross-examination by Christine Gakobo for the Prosecution, the 2nd accused was asked to explain how she obtained a copy of her personal register that she sought to rely on in court and she said it was given to her by her then Advocate D.P. Kinyajui who had been supplied by the Investigating Officer. However, when she was taken through the list of exhibits supplied and signed for by D.P Kinyajui on 6/9/2012; she conceded that it was not in the among the registers served on her Advocate by the Investigator.

284. On being challenged that Malakwen (PW 11) who had been working with her for a long period of time had said the signature in the payment voucher for Alice Wambu Kabugi-P. Exhibit 32 looked like hers, she replied:

“...it might look like mine but is not mine. Yes, he said he had worked with me for 4 years. You can look like you are good outward but inside you are not...”

285. Put to her that Isaac Sila Mumo (PW 4) also testified that the signature was hers, she responded:

“...I heard the testimony of Sila Mumo. He was working in assessment section. This is not my signature and I was not working in the same office with Mumo. I still stand it was not my signature...”

286. Told that the document examiner Jacob Oduor had examined the signature and arrived at a similar conclusion, she asserted:

“...It still remains not my signature. He should have come for my signature and he did not come...”



Shown her specimen signatures (P. exhibit 87 a - f), she admitted:

“Yes, it is my specimen signature and handwriting I gave to Mokaya. Even the signatures there are very far from the ones in the vouchers...”

287. The 3rd Accused, Paul Thuo Kibuna (DW 3), told this Court that he was employed in 1997 as an Accounts Assistant in Pensions Department and confirmed on 12/5/1999. On 22/4/2005, he was promoted to the position of Accountant II then on 13/5/2008, he got another promotion to the position of Accountant I.

288. In the Pensions Department, he performed two roles; namely, verification of vouchers to ascertain the pension payable. He also performed the role of one those authorized officers to deliver the G-Pay to Central Bank.

289. In answer to allegations in Count 1 which relate to the pensioner, Alice Wambui Kabugi payment voucher 2009-10-07741-(P. exhibit 32); he stated:

“...The payment voucher I am accused of is fake because it is alleged the voucher was examined on 12/2/2010 and it was authorized on 14/2/2010; the payment voucher on verification level is dateless, and at approval level dateless but cash office paid it on 22/10/2010... still on that file register, P. exhibit 49, is clearly signed by Simba-P.W. 10 and Mary Mukunya...”

290. In respect to pensioner file number APN/[PC/223557](#) for Payment Voucher-in respect of Charles Mwathi Muniu (P. exhibit 36) the subject of count VI, he explained:

“...It is not true. From the proceedings, it shows the file was verified by Simba-P.W. 10 and approved by Mugo who is PW 8. Allocation register P. exhibit 48-pg. 54 and P. exhibit 49 confirm that...The file when it came to accounts division was created by Ekirapa, verified by Simba PW 10 and approved by Mugo- PW8. I had nothing to do with that...”

291. In his defence to allegations in count IX, in relation to inflated payment voucher for Peter Mwangi Kariuki of pensioner file number APN/[PC/222821](#) which alleged the offence was committed between 17th February and 22nd February, 2010; he stated that during the period between 21st and 26th February, 2010; he was in Kabete Institute of Administration the present day, School of Government. He observed that the forged voucher did not have the date of verification and wondered that the date verification was showing as 18/2/2010 which meant it was done before authorization which showed 19/2/2010 to which he said:

“...It is thus not possible for the upper level to come before the lower level...”

292. Contrary to the allegation that he approved the payment voucher subject matter of that count, he said he actually worked on the original genuine voucher in respect of this file which was evidenced by entries in the vote book that indicated that on 27/10/2009 a sum of Kshs. 466024 was the assessed as lump sum and Kshs. 5,825 was the monthly pay. He said when it was taken to accounts; the register and the workflow showed that the voucher was created by Muturi, verified by Kibuna (the accused) and approved by Muchina.



293. Reacting to count XII, which relates to Pensioner Hannah Waithera Njau- payment voucher-P. exhibit 42, pension file number APN/[PC/222864](#); he testified:
- “...From the proceedings...Barasa allocated the file to Peter Mwangi (PW 7) who verified it, signed the register and forwarded the file to Mugo on the same date...”
294. In respect to PW 11, Samuel Kipyego Malakwen, he described him as an unreliable person who had a history of dishonesty, he said:
- “...I want to state categorically before this court that Malakwen is not a reliable person. I remember around 2004, while I was in revenue collection; he made Government Official MR- Receipt Number 0429924 immediately disappear and became untraceable. I reported the matter to my boss Mr. Murahim. The matter was watered down and I was very much ashamed. So Malakwen when he alleges he is able to recognize my signature in payment voucher is not true...”
295. He also stated that his name did appear anywhere in the preliminary report of Pascal Mweu, PW 29.
296. The accused stated that in his entire working life, he has never been taken through a disciplinary process let alone being investigated for a crime and was thus thoroughly shocked when these allegations were made against him.
297. On cross-examination, he was confronted by the Prosecutor, Ms. Gakobo about his claim that the payment voucher P. exhibit 36- Charles Mwachui Muniu was verified by Simba and not him. He was asked to check for the amount of lumpsum payable in P. exhibit 36 which he stated was Kshs. 2,185,583. He was then referred to the pensioner’s file – P. exhibit 35, and then to G.P. 178, computation appendix at pg. 5 where he read the lump sum figure was indicating Kshs. 1, 185, 583. He made the observation the lumpsum in the voucher and the appendix differed.
298. He was then systematically taken to the register for Simba/Mary, P. exhibit 49; who were verifier and approver respectively. At pg. 91 of the register- P. exhibit 49; he answered he could locate pensioner file number APN/[PC/223557](#) which was item 74 in the said register. He also stated that the register indicated it was verified and approved on the same date, 5/2/2010. He was then referred to P. exhibit 36 and asked to check on the date it was examined and authorized and he gave the date of examination as 7/2/2010 and authorization date as 10/2/2010. He said the date it was verified was missing but going by his testimony that authorization precedes verification and approval and the register was showing Simba verified on 5/2/2010, he made a concession, thus:
- “...then what he verified is not before the Court, it appears what he verified is not this one...”
299. As to the allegations he raised against PW 11, Samuel Kipyego Malakwen, he admitted that when Malakwen testified, he was not confronted with those allegations he was making against him in his defence.
300. The 4th accused, Edward Amian Ongati (DW 4) testified that he was the paying officer in the Pension Department during the time these matters arose. He stated that the difference between a paying officer and a cashier is that a paying officer is junior to the cashier and in fact, it is the cashier who supervises the paying officer. At the time, the cashier was Catherine Kalali (PW 18) who was the one in charge of cash office.



301. He as the paying officer would to receive the files in cash office and the first thing he would do was to separate them between those that were to be paid through the Saccos and Banks.
302. He would then arrange the payment items by grouping them into a maximum of 20 payment items per schedule because the computer was set up to take a maximum of 20 items. If the items were less than twenty, say 15 or even 1, and that particular day there was nothing else, the system closed with the number available and gave it a schedule number. He explained:
- “...When I say items, I don’t mean files because one person can have several payments. I mean payment items...”
303. After that, he picked the payment vouchers and logged into the system where he explained what he would happen after logging in, he said:
- “...Immediately I enter the 1st payment in that schedule of payments, it automatically issues a schedule number. It is not me who created a schedule number, it is the system. It will lead you to the items to a maximum of twenty. Once you enter the file number, it will give you all the other details then you compare what is in the system and physical voucher....I was not the one entering the figures of what was supposed to be paid. At the time of payment, I would use the hard copy of the original voucher. Before I start payment, I make sure the place for examination is signed, authorized officer, verification and voucher approval...”
304. He testified every day, files ranged between 50 and 200. If the figure in the payment voucher and the system was different, you would bring it to the attention of the cashier to make a follow up. At the beginning the system presented some challenges like posting of irregular amounts and double entries whereby you could find one item appearing twice, item 2 the same or 3, in that order until the last item. Cents could be in posted in irregular amounts like 23 cents, 73 cents and so on.
305. When it became too rampant, staff was added in the cash office because it was difficult for him to enter and at the same time check the hard for those details.
306. He explained that if in generating the schedules, the number showing in the system was different from the one in the hard copy; he had to seek the assistance of IT personnel because one particular item with an issue poisoned the entire schedule.
307. He testified that if there was any error detected in any of the items in a payment schedule, he had to carry all the files with a print out of the schedule to IT Section for the error to be rectified but since it could take long to resolve, one would inquire from IT whether to continue paying others that kept on coming, in case they told you to continue, you continued paying and the system continued generating more schedules.
308. On what happened to the schedule after IT rectified the error and the files were returned to him, he said:
- “...IT would advise if you will continue with the same or not. What was important was to account for your files. When they come back, my concern is that all files are there and you account for them. When they come back, Robina Masese and Malakwen were to check the physical voucher entries against what was in the system, if there was a problem, they alert the cashier who was to take action...”



309. He confirmed he paid the Pensioners in counts I, II, III, IV, V, VI, VII, VIII, and IX because when their files reached cash office, their vouchers had all the required signatures. He said payment vouchers- P. exhibit 32 for Alice Wambui Kabugi, P. exhibit 34- for Peter Mwangi Kariuki, P. exhibit 36 –for Charles Mwathi Muniu, P. exhibit 42 for Hannah Waithera Njau were all in their original form, fully signed and the amount in the system and the hard copy tallied hence he paid them.
310. He stated that it was not his responsibility to examine the G.P. 178 stating:
- “...According to the routine and rules of cash office, you are limited to accounting document, that is the voucher. The Investigating Officer did not prefer charges against me on the four. He was convinced I did my work properly...”
311. He said for pensioners Simon Kamande Mwangi and Meshack Ayub Okemwa, the Investigating Officer did not show him any proper signed payment vouchers, instead he showed him what he described in the office jargon as “laughing vouchers”, meaning blank vouchers that are not signed (P. exhibit 5 a & 6 a) which could not be acted on by him in the cash office.
312. He testified that, personally he had capacity to create or make the two payment schedules the system generated schedules automatically. In fact, in answer to count XIII and XIV, he said:
- “...Count 13 and 14 are not true. I never prepared a schedule, it comes automatically...”
313. He said in the cash office, he was the first person. When he ‘paid’ any voucher, it had to be checked by his colleagues in the cash office. The cashier also had to ensure that the total amount in any schedule balanced with what was in the payment vouchers before entering them in the cash book. She could not enter anything in the cash book if the electronic copy and hard copy did not agree. Again, if there was any mistake, she could not prepare the G-Pay and had to take out any payment schedule with issues. In the two cases, the cashier prepared the G-Pay for all the pensioners.
314. In respect to payment schedules that made payment to Simon Mwangi Kamande and Meshack Ayub Okemwa, he explained:
- “...It is not possible that I could have paid Kamande and Meshack without checking by Malakwen and Robina. If they had discovered anything, my cashier, Catherine could have not prepared the G-Pay. She should have remanded the schedule...”
- Concerning his signature in the register, he affirmed:
- “...I am not denying I paid the files, I have no problem with the handwriting in the register. It is proof I received the files. He did not find any handwriting in the vouchers...”
315. In his own words of the 4th accused, (DW 4) remarked towards the tail end of his defence:
- “...In the files before the Court, I never altered or inflated any of the amounts. If there was any inflation, I would not be aware so long as electronic and hard copy tallied, if they agreed, you could not suspect. I did not collude with anybody to inflate the amount...”
316. On cross-examination by M/s. Christine Gakobo for the Prosecution, he restated that was limited to checking whatever was in the voucher and in the system only.



317. Cross-examined by the 1st accused on why he paid the vouchers he said:
- “...There were signatures which looked like your signatures, you denied it, and I trust that...
The signatures looked like normal signature I normally see...”
318. He was further challenged by 1st accused about what he would do if he realized a schedule had an issue to which he replied:
- “...If schedules had issues, I would take to IT... the IT as I said before are the only people who can re-align the schedule or amend anything in the system...Once they have re-aligned, It means it is in order so printing can be done by me or the cashier...”
319. The 1st accused then put it to him that if a schedule could be re-aligned between cash office and IT, then it was possible that the same people could create a new schedule and take to him to pay; he replied:
- “...you only refer to them specific areas which have an issue. If they print a voucher and append signatures and realign the schedules, it is difficult for me to know...”
320. The 1st accused put him on the spot wondering who might have slept on his/her job and enabled him to make those inflated amounts, he replied:
- “...It was cross-checking and the cashier, my limit was the vouchers and the system; that was my limit. If at all they were told to go through the entire file, they slept on the job; a single person could not check the entire file. I could not have managed that...”
321. The 2nd accused also cross-examined the 4th accused insisting he could not have been paying anything without the checking since every voucher was attached to a file to which the 4th accused reiterated:
- “...My limit was to get the file and remove the voucher and compare with the system. That is why they brought new officials to be doing that work of counter-checking...in an office we had job descriptions, one had to do their part. My job description was to compare the voucher and the system. It was the Chief Accountant who told me that...”
322. He disputed a suggestion by the 2nd accused on cross-examination that fraud could only have occurred between the cash office in collusion with IT, he protested:
- “...If you look at P. exhibit 32, 34, 36 and 42, they came all the way to cash office...”
323. During cross-examination by Ms. Kadenge for the 4th accused he was asked to explain what happened in the case a schedule that went to IT, files would go back for voucher examination, authorization, verification and approval. He explained:
- “...If there was a mistake in schedule, we take the whole schedule to IT and they come back with new schedule. They would not go back to verifier. We would inform the cashier first...”
324. In re-examination, he said the the schedule that paid Meshack Ayub Okemwa, unlike the schedule number 443997 that paid Simon Kamande which had double entries in the first 3 items, the one that paid Okemwa had no problem to warrant it being reversed to IT.
325. I have read the submissions made on behalf of the State by Ms. Christine Gakobo and those of the defence by Mr. Masinde for the 1st and 2nd accused, Miss Kadenge for the 3rd accused and Mr.



Onsongo for the 4th accused. I endeavor not to reproduce these submissions here, I found them useful in aiding this court to make its findings in this case, and where necessary I be making reference to the submissions.

326. The accused are charged with abuse of office in all the counts, for instance, in count 1, 2 and 3; they all relate to a payment voucher in respect of one pensioner by the name, Alice Wambui Kabugi. The three accused, 1st accused, Millicent Weruma Mugai; 2nd accused Sophie Wanja Mugwe and 3rd accused Paul Thuo Kibuna, in that order though separately appearing each in an independent count, they are alleged to have abused office through working on that voucher by examining, authorizing and approving it respectively, with the consequence that they inflated the pension lumpsum gratuity payment by 1 million shillings above what had been computed by the Director of Pensions.

327. Section 46 of the *Anti-Corruption and Economic Crimes Act* sets out offence of abuse of office as follows:

Section 46- Abuse of office

“ A person who uses his office to improperly confer a benefit on himself or anyone else is guilty of an offence.”

328. To prove this offence therefore, the Prosecution has to establish the following: The accused was/is a holder of a particular office or position Where he/she is mandated to discharge certain responsibilities in his/her office/position That he/she discharged his/her mandate improperly, and conferred a benefit on himself or another person PARAGRAPH 329.

The fact that all the accused persons are employees of the Pensions Department in the service of the Government of Kenya whereby 1st and 2nd accused are Accounts Assistants, 3rd accused Accountant 1, and 4th accused a clerical officer who was serving as paying officer in cash office is not in dispute. They themselves confirmed that fact in their respective defences. This proves therefore that they held public offices in those capacities. There were duties attached to each position that the 4 accused persons held as was demonstrated by their own as well as Prosecution evidence on record. The question for this Court will be whether there was any benefit conferred, if so, whether it was for reasons of any wrongdoing or improper discharge their mandate.

330. The Court has thus determine, if there was conferment of the alleged benefit on Alice Wambui Kabugi, Charles Mwathi Muniu, Peter Kariuki Mwangi, Hanah Waithera Njau, Simon Kamande and Meshack Ayub Okemwa as alleged in counts 1 to 14 and if so, whether or not, the accused were responsible for effectuating the said benefit by improper by any act or omission pertaining touching on their mandate or office.

331. Starting with Pensioner Alice Wambu Kabugi, the subject of count 1, 2, and 3; her pension gratuity payment was computed by Senior Pensions Assistant Isaac Mumo Sila (PW 4) who filled and signed the pension computation appendix-P. Exhibit 31 (a) & b on 11/9/2009 having assessed it at Kshs. 823, 530/-. It was audited and approved on 28/9/2009.

332. He similarly computed the pension gratuity lump sum for Charles Mwathi Muniu filled and signed the pension benefit computation appendix dated 4/1/2010- P. exhibit 35 for Kshs. 1,185,583.

333. He also worked on the pension benefit computation for Peter Mwangi Kariuki and calculated his pension gratuity at Kshs. 466,024.4

334. Damaris Mutete Kiamba (PW 6) computed and assessed the lumpsum gratuity for Hannah Waithera Njau and filled her benefit computation appendix on 16/11/2009 which she produced in Court



- as P. exhibit 40 & 41. The same was audited on 18/11/2009 and approved by the Directorate on 20/11/2009. The approved gratuity was Kshs. 695,760.
335. According to the evidence of Chief Accountant Pension, Gerald M’Ikunyua (PW 12) after final approval of award by the Directorate as happened in the above cited instances, the payment voucher was to be prepared at the Accounts Section but had to be based on the approved assessment by the Directorate. It would then go through voucher processes of examination, authorization, verification and approval then proceed to cash office and the G-Pay for eventual transmission of funds to the beneficiary.
336. The payment vouchers in this case did not comply with the requirement that they should have been based on the amount assessed and approved by the Director of Pension.
337. The payment voucher for Peter Mwangi Kariuki- P. exhibit 34 was also exaggerated to Kshs. 1,466,024 being the purported gratuity lump sum, an increase by 1 million shillings from the assessment by Isaac Mumo(PW 4) which was Kshs. 466,024.
338. For Charles Mwachu Muniu, the payment voucher- P. exhibit 36 the voucher had an escalated sum of Kshs. 2,185, 583 as the pension lump sum gratuity also reflecting an added figure by 1 million shillings. The assessment by Isaac Mumo (PW 4) on 4/1/2010 was Kshs. 1,185,583.00.
339. In respect of Hannah Waithera Njau- her payment voucher- P. exhibit 42 was showing Kshs. 1,695,760.00. The assessment by Damaris Mutete (PW 6) who filled the benefit computation appendix on 16/11/2009 that was produced in Court as P. exhibit 40 & 41 was for Kshs. 695,760.
340. From the evidence on record, it is apparent that there was no basis provided for those alterations on the assessment done and approved by the Director of Pensions. Accordingly the finding of this court is they were not justified hence improper.
341. The next question is whether indeed this particular benefit that stood at 1 million shillings in each case was actually conferred on any or all the four pensioners, namely: Alice Wambui Kabugi, Charles Mwachu Muniu, Peter Kariuki Mwangi and Hanah Waithera Njau as alleged.
342. It should be remembered that transmission of money to a beneficiary was a process that went beyond voucher processing to the point when money was wired into the beneficiary account.
343. An examined, authorized, verified and approved payment voucher had to be progressed to the cash office where the following other activities in summary took place:
- i) Generation of the schedule control reports by the paying officer after cross-checking of the information in the hard copy and the system
 - ii) schedule control reports generated had to be examined or verified an officer in the cash office besides the cross-checking done by the paying officer.
 - iii) Return is made of the verified schedule control reports for final printing by paying officer after examination of the schedules. Examining officer compiles an EFT request schedule analysis report indicating all the schedules he/she has examined and total value of each.
 - iv) Checking the schedule control reports against the EFT schedule analysis and comparing with the system. Preparation of G-Pay for forwarding to Central Bank to enable transmission of funds to accounts of pensioners through commercial banks.
344. In respect to the payment of the four pensioners, the above processes were successfully undertaken in the cash office since it resulted in a G-Pay dated 23/2/2010 -P. exhibit 53 (a) being compiled and



delivered to Central Bank under the cover of an instruction letter dated 24/2/2010 requesting Central Bank to debit the Pensions Account with Kshs. 131, 389, 210.50 by crediting 57 items. Among the attachments to the G-Pay was a standard file interchange that enabled National Bank to do clearance for Saccos in clearing House- P. exhibit 53 (b). Attached to G-Pay were two schedule control reports numbers 444201-P. exhibit 53 c and 444202- P. exhibit 53 d. Under the schedule P. exhibit 53 d, i.e. 444202, payment of Kshs. 1,953, 925 was earmarked for transmission to beneficiary account of Alice Wambui Kabugi. There was also payment for Peter Mwangi Kariuki for Kshs. 1,541,224.50. In schedule control report- P. exhibit 53 c, there was payment to Charles Mwathi Muniu for Kshs. 2,354,797.70 and Hannah Waithera Njau for an amount of Kshs. 1,958,497/-.

345. The Deputy Manager Central Bank, Leornard Kimutai Kipsaina (PW 15) testified these instructions were effected and produced proof of the RTGS transmission- P. exhibit 60.

346. The Deputy Manager, Metropolitan Sacco, Benson Ng'ang'a Mwangi (PW 25) confirmed that indeed the amount of Kshs. 8,612,411.70 reached the Sacco Account at COOP Bank Thika on 2/3/2010 as per credit advice-P. exhibit 78. However through its letter dated 16/3/2010-P. exhibit 79; National Bank recalled the monies. The money had not been deposited in the beneficiary accounts yet. The Sacco returned the money on 31/3/2010-per P. exhibit 80.

He explained:

“...On 2.3.2010 National Bank of Kenya further sent a total of Kshs.8,612,411.70 to the same Co-operative Account Bank No.01120063114802 held at Kiambu Branch. This time round the Society did not receive any credit advice. The money could not be applied to any of beneficiaries account since they were not known...On 16.3.2010, the National Bank of Kenya recalled total amount received above. There was a letter to that effect dated 16.3.2010... recalling Gratuity Pensions sent via EFT on 8.3.2010 for Kshs.8,612,411.70 in respect of

- (1) Anne Waithera Njau – kshs. 1,928,347.00/=.
- (2) Charles Mwathi Muniu Kshs.2,354,647.70
- (3) Peter Mwangi Kariuki kshs.1,541,074.50
- (4) Alice Wambui Kabugi kshs.1,923,715.50
- (5) Stephen M. Njoroge Kshs.844,567.00

Total Kshs. 8,612,411.70/=.

It is signed by P. Kalya and B. Mulei of Central Clearing Centre. On receipt of instructions, we returned total amount to National Bank of Kenya pay-roll Service vide RTGS on 31.3.2010...”

347. Alice Wambui Kabugi (PW 23) testified before this court that she did not receive any pension in the year 2010. She received said she received her pension in 2012 and the same was about Kshs. 900,000 and in fact, the delay to release her pension was raised in parliament by the local MP whom she had complained to.

348. Peter Mwangi Kariuki (PW 27) testified that he received his pension in the year 2012 and was unaware of any other payment. It was around 500,000/-.



349. Equally, Charles Mwathi Muniu (PW 31) said he received Kshs. 1,354,647.70 as indicated a prior letter he had received from Director of pensions and was thus aware of the amount he expected to receive. He was not aware of any other payment.
350. Based on these facts can, be said that the above pensioners were actually conferred each a benefit of Kshs. 1 million? The Sacco returned the money on 31/3/2010-P. exhibit 80. None of received that money in their Sacco/Bank account.
351. M/s Christine Gakobo for the Prosecution submitted that the offence of abuse of office had been proved against the accused. She posited:
- “...The evidence clearly shows through the actions of the accused examining the vouchers in issue the same were processed and paid within the Pensions Department payment system. The monies left the Pensions system through the various commercial banks and it took the intervention of CBK for monies to be ever recalled. This was in 2011 long after payments had been effected in 2010...”
352. In his submissions, Mr. Masinde for the 1st and 2nd accused differed. He looked at the definition of a benefit and applied it to the facts on record. He said:
- “...A benefit is defined under section 2(1) of the Anti-Corruption & Economic Crimes Act to mean any gift, fee, reward, appointment, service, favour, forbearance, promise or other consideration or advantage. None of the said pensioners admitted or confirmed that he received any gift, loan, fee, reward, appointment, service or advantage from the first and second accused persons...”
353. I entirely agree with Mr. Masinde’s submission that this element of the offence, namely, ‘conferment of the benefit’ was not proved as having been actualized in relation to the four named pensioners in the circumstances of this case. It was just about but it never came to fruition when money failed to reach to those pensioners’ accounts. It is not tenable in my view to say that because money left Pensions Account through actions of the officers at Pensions directing it into unsuspecting recipients that did not even reach them amounted to conferring a benefit on them.
354. I find that no benefit was conferred on Alice Wambui Kabugi, Charles Mwathi Muniu, Peter Mwangi Kariuki or Hannah Waithera Njau as alleged in counts I to XII .
355. That said, the facts on record are manifest that there was a clear intention to commit offences of abuse of office and means towards the commission of those offences were overtly put in motion only for them to be intercepted when last element of the substantive offence was almost done to complete the offence. It is trite law that where there is a clear intention to commit an offence and overt acts which manifest that intention are in fact put in motion, an attempt to commit the intended offence has been committed even though the accused does not achieve the objective of a complete offence.
356. Section 47 A of the Anti-Corruption Act and Economic Crimes *Act, No. 3 of 2003* deals with attempts, conspiracies, etc. At section 47 A (1) it states:
- “A person who attempts to commit an offence involving corruption or an economic crime is guilty of an offence”
357. Although the substantive offence charged in counts I to XII was not fully proved, by reason that no benefit was conferred on the four pensioners, there is ample evidence to demonstrate



beyond reasonable doubt the an attempt to improperly confer a benefit was executed even though unsuccessfully. The fact that escalation of the amounts was done in blatant disregard of assessments that were right inside the pension files that were at disposal of the officers as they prepared the vouchers, examined, authorized, verified and approved is plain indication that it was done deliberately with a guilty mind. The facts proved support an attempt to commit the offence charged in counts I to XII. Consequently, section 47A (1) of the Anti-Corruption and Economic Crimes is thus applied by the Court.

Section 180 of the Criminal Procedure Code Cap 75 provides that;

“When a person is charged with an offence, he may be convicted of having attempted to commit that offence although he was not charged with the attempt.”

358. For reasons aforesaid, Counts I to XII shall be taken as attempts to commit the offence of corruption, namely abuse of office in contravention of Section 47A (1) by attempting to improperly confer a benefit to each of the four named pensioners in the twelve counts.
359. Having found that there were attempts to commit those offences of corruption, to wit abuse of office; in counts I to XII, then the question becomes who did it? Was the participation of the accused persons proved beyond reasonable doubt?
360. The Prosecution relied on witnesses who had worked with the accused persons and testified that that they were familiar with the signatures of the accused persons and in their view, the signatures in the said payment vouchers were like those they had seen the accused persons sign in the course of many years of working together.
361. Under the *Evidence Act* Cap 80- section 50 (1) provides that when the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed is admissible.
362. Section 50 (2) provides that a person is acquainted with the handwriting of another person when he has seen that other person write or when he has received document purporting to be written by the person in answer to document written by himself or on his authority and addressed to the person or when in ordinary course of business documents purporting to be written by the person have been habitually submitted to him.

Advocate for the 1st and 2nd accused to submitted as follows:

“...The handwriting expert did not satisfy the requirement of section 50 (2) of *Evidence Act* and such his evidence should be disregarded since he was not acquainted with the signatures of the first and second accused persons as contemplated in law. He never saw the first and second accused write their signatures. He never provided details of similarities and dissimilarities of the first and second accused on the questioned documents...”

363. With due respect to Advocate for the 1st and 2nd accused; I find his submission a misapprehension of the provisions of section 50 (1) & (2) of the *Evidence Act*. Section 50 (1) and (2) of the *Evidence Act* is does not in my view relate to expert opinion evidence but as the section suggests, it relates to “any person” acquainted with the handwriting in question and provides the basis for admission of such evidence to “when he has seen that other person write or when he has received document purporting to be written by the person in answer to document written by himself or on his authority and addressed to the person or when in ordinary course of business documents purporting to be written by the person have been habitually submitted to him.”



364. This basically relies on that person's observation based on frequent exposure to such a writing or signature and does not require a process of meticulous conscious deduction as one would expect of an expert.

365. In explaining the implication of section 50 (1) & (2) of the Evidence Act; Philip P. Durand in Evidence for Magistrates Part 1, at pg. 129 illustrates:

“...The question is whether a signature on a letter from

- A who lives in Dar-es-Salaam, is a forgery;
- B an exporter who lives in Nairobi, and has written letters addressed to A in Dar-es-Salaam, receiving back letters which are purported to have been written by A.
- C is B's secretary, whose duty is to examine and file B's correspondence.
- D is B's solicitor. B regularly submits letters to be from A to D for legal advice.

The evidence of B, C and D as to the genuineness of the handwriting of A is admissible, even though none of them has seen A write...Other persons such as A's secretary, or others who have seen him write many times and are familiar with handwriting, could give evidence of genuineness. ...”

366. On the other hand, admissibility of expert opinion evidence on a subject such as handwriting or signature does not depend on acquaintance or familiarity with such writing or signature; that is for a lay or non-expert witness; expert opinion on the contrary is admissible on the basis that the expert possesses special skills, knowledge or expertise coupled with relevant experience in that field he is called to attest to so as to scientifically aid the court to draw proper inferences and form proper opinions from such specialized facts as might be proved. Expertise can gained through study or substantial acquired relevant experience in the particular field.

367. Consequently, the admissibility of the expert opinion evidence is founded on section 48 of the Evidence Act, not section 50 (1) and (2). Section 48 provides:

48 (1) When the Court has to form an opinion upon a point of foreign law, or science or art, or as to identity or genuineness of handwriting or finger impressions, opinions upon that point are admissible if made by persons specially skilled in such foreign law, science or art, or in questions as to identity, or genuineness of handwriting or finger prints or other impressions.

48 (2) such persons are called experts.

368. Turning now to facts relied on to establish the identity of signatures in the four payment vouchers- P. exhibit 42, 32, 34 and 36, the prosecution relied on both the evidence of non-expert/lay witnesses who had dealt with the accused persons as colleagues in the course of work for a considerable period of time as well as the expert opinion evidence of Jacob Oduor (PW 28) who not only gave his academic credentials but also relevant experience in the area of document examination.



369. In their defences, the 1st, 2nd and 3rd accused persons unanimously relied on the comment made in the preliminary Investigation Report by Pascal Mweu (PW 29) who in had observed that:

“...the signature on payment vouchers appears to be forgeries since they are not the true obtained signatures of Millicent Mugai, Sophia Mugwe, and Sammy Muchina who are said to have examined the vouchers”

370. However, Pascal Mweu (PW 29) conceded and disclosed that at the point he was coming up with that position in his preliminary report, it was merely informed by interviews he had conducted; he had not subjected those signatures to any forensic examination. Accordingly, it is the finding of this court that that conclusion was founded on solid facts. It is of minimal, if any evidential value.

371. There was also the contention by the 3rd accused through his Advocate Ms. Kadenge that a lot of emphasis was put on PW 11, Samuel Kipyego Malakwen, by the Prosecution yet as testified by the 3rd accused person, the said witness cannot be trusted. She also argued that as per workflow produced in court, for instance in Pension file number 221513 for Meshack Ayub Okemwa, that payment voucher was produced by Malakwen. I will shortly give reasons why I did not consider giving the said workflows any serious consideration but in principle, I concur with Ms. Kadenge that Malakwen was in fact an accomplice in these crimes and this shall be demonstrated shortly through the evidence on record. However, although it seems immoral that a participant in crime becomes a prosecution witness like Samuel Kibyego Malakwen in this case, the law does not disqualify an accomplice from being a competent witness for the Prosecution.

Section 141 of the *Evidence Act* declares:

“...An accomplice shall be a competent witness against an accused person; and a conviction shall not be illegal merely because it proceeds upon the uncorroborated evidence of an accomplice...”

372. Nevertheless, despite the fact that an accomplice is a competent witness for the prosecution, the fact that he is a tainted person cannot be wished away especially when one considers that background. That is why such evidence should always be approached with caution and invariably as matter of sound jurisprudential practice require corroboration. In the old case of

373. *Davies vs. DPP (1954) A.C. 378* it was held that where a person who is an accomplice gives evidence on behalf of the prosecution, it is the duty of the Judge to warn the jury that although they may convict upon evidence, it is dangerous to do so unless corroborated.

374. On why I rejected the evidence of work flow, I would to make the following observation. The witnesses for the prosecution who testified including the man who was overseeing Pension Management Information System disclosed that the audit trail which could have identified who logged in the system, when and how long they had been there was switched off.

375. Besides switching off the audit trail, the system was configured in such a way that all IT officers had unlimited access to all the modules from the beginning to the end. No wonder, all the IT staff that gave their testimony before this court were categorical that certain aspects of the offence like entering the system and effecting amendments in a voucher had to be done with the aid of IT personnel. Yet shockingly, not a single IT personnel was found culpable by the Investigator. The entire collectivity of IT staff working in Pension Department at the time becomes the second ranking group that I find owes the Investigator in this unparalleled appreciation for not finding any reason to make them part of this Prosecution.



376. The system was thus compromised by the fact that it lacked an audit trail and also the fact that the IT staff could log into the system at any level, make whatever changes they wanted without the fear of their specific credentials being detected, in fact, it appears to me that they could even enter the system disguisedly. Mr. Opiyo (PW 3) said:

“...We did create user accounts for new users, and also had a user account ICT which could access all the modules to facilitate migration to the new system. This user account was accessible to the ICT staff...”

377. That completely rendered the workflow that came from the system worthless piece of evidence yet it should have been very strong evidence in a proper working system with an effective audit trail.

378. That said, I agree with the Investigating Officer, with this fatal weakness in the PIMS system; the workflow was of no evidential value because it could easily be manipulated by the very people behind the crime.

379. Resorting to the manual system which was running parallel with the said pension information management system was the only way left to find out who was involved in this crime. Turning now to the issue of how the prosecution established involvement of the accused persons in these crimes, as mentioned at the beginning, the Prosecution totally relied on manual records. It called witnesses who were able to identify the signatures of the accused persons having worked closely together and also the forensic expert evidence. The 2nd accused signature on payment voucher for Alice Wambui Kabaugi-P. exhibit 32- was the first to be identified by Isaac Mumo Sila (PW 4) who when shown the document remarked:

“...there is a second signature; I think I can relate it to the second person on the bench. I am forgetting the name. We used to call her Sophie. It is the second signature in blue, authorizing the payment...”

380. Samuel Kipyego Malakwen (PW 11) then extensively gave evidence identifying the signatures in various vouchers:

381. In respect of P. exhibit 32 for Alice Wambui Kabugi, that forms the basis of counts I, II and III, he testified:

“...The payment voucher was examined on 12.2.2010...I have a signature that looks like that of Millicent, 1st accused. I worked with Millicent for 2-3 years. I was familiar with her signature. It went through authorization on 14.2. 2010. The authorization signature is that of Sophia, the 2nd accused. I worked with 2nd accused for about 3 years and I was familiar with her signature...”

382. In respect of payment voucher for Charles Mwathi Muniu- P. exhibit 36 which forms the basis of counts IV, V and VI, he stated:

“...Payment voucher was printed and examined on 7.2.2010. I have a signature like that of accused 1 as the examiner of that voucher. It was authorized on 10.2.2010. It was authorized via a signature that looks like that of 2nd accused. Verification was done via signature like that used by Kibuna, the 3rd accused...I had worked with Kibuna for over 3 years and I was acquainted with his signature. Payment as per cash office stamp is on 22.2.2010...”



383. In respect of payment voucher for Peter Mwangi Kariuki- P. exhibit 34 the subject of count VII, VIII and IX; he stated:

“...It was printed and examined on 17.2.2010...as per signature; it looks like that of Millicent-1st accused. It was authorized on 19.2.2010. It appears the authorizing signature is that of Sophia, accused 2...”

384. With respect to the payment voucher for Hannah Waithera Njau-P. exhibit 42; the subject of count X, XI and XII; he said:

“...It was printed and examined on 21.1.2010....I have a signature that resembles which was being used by accused 1. It was authorized on 23.1.2010 vide signature which resembles one used by 2nd accused. It went to verification and the signature appearing resembles that of accused 3. It was paid on 22.2.2010...”

385. Additional evidence by witnesses with regard to signature in the payment voucher –P. exhibit 42 as against the 3rd accused was given by Samuel Kuria Mugo (PW 8) an accountant who was working as an approver and Peter Wanyahe Mwangi (PW 7) also an accountant who was doing verification. When showed the payment voucher for Hannah Waithera Njau- P. exhibit 42, Peter Wanyahe Mwangi- (PW 7) said:

“...It appears to have been verified by Mr. Kibuna. I was familiar with Mr. Kibuna’s signature...”

Samuel Kuria Mugo (PW 8) stated:

“...The voucher was also verified, the signature resembles that of Paul Kibuna, I was familiar with his signature having worked with him since 2007...”

386. During cross-examination, these witnesses maintained that their evidence was based on what they could see; the signatures looked like those they used to see accused persons append on documents as they interacted with them in the course of working together.

387. When the document examiner examined the questioned signatures in the said payment vouchers- P. exhibits 42, 34, 36 and 32; that is payment vouchers of Hannah Waithera Njau, Peter Mwangi Kariuki, Charles Mwathi Muniu and Alice Wambui Kabugi respectively, he found signature marked ‘1’, ‘2’ and ‘3’ appearing in the payment vouchers in that order when compared with the known handwriting and specimen signatures of the 1st, 2nd and 3rd accused namely Millicent Weruma Mugai, Sophie Wanja Mugwe and Paul Thuo Kibuna in that sequence as similar and indistinguishable to those in their respective specimens and known handwriting and thus concluded they were made by the same author in respect to each of them.

388. The accused persons denied these charges vehemently. In answer to the allegation that she signed payment voucher for Alice Wambui Kabugi, P-exhibit 32; the 1st accused sought to rely on the vote book register-P. Exhibit 48 where she said the payment voucher number 2009-10-7441 was reflected in that register with an amount of Kshs. 958,278.05 which were details filled during verification on 31.12.2009. Since her level was examination which came before verification, she argued she could not have examined the voucher on 12.2.2010. However, she had claimed earlier that according to a copy



of a personal register she did not produce, she had worked on the file on 11/2/2010. Realizing the apparent mix up in the narrative, she attempted to explain that away as follows:

“...Yes, according to the analysis, the file seemed to be having a problem. Since the old voucher was/is not in the pensioner’s file, I am not in a position to tell the court what the problem was...”

389. The attempt to rely on the vote book register to show she could not have worked on the file on 12.2.2010 thus flopped as her own copy of the register which she was referring to though not produced indicated the file of Alice Wambui Kabugi-bearing payment voucher 2009-10-00 7441 was in her custody on 11/2/2010. It thus means she had an opportunity of having actually worked on it the previous day just a day before the inflation was done.

390. With regard to PW 11, Samuel Malakwen’s evidence of her signatures in the payment vouchers before the Court, she asserted:

“...Samuel Malakwen was before this Court and testified that the signatures looks like mine. By stating ‘looks like’ he was not sure having worked with him that it was my signature. I agree with him that it looks like mine and looking at it, it also ‘looks like’ but is not my signature...”

391. The accused confirms that indeed PW 11, Malakwen was not mistaken in rendering his lay view about her signature. She also confirmed that at a glance they looked like her signature but they were not. Any doubts that could have existed about the genuineness of 1st accused signature on the said payment voucher was settled by the forensic examination of Jacob Oduor (PW 28) who corroborated Malakwen’s identification of the signature as that of the 1st accused in the said payment vouchers.

392. In the submissions by Mr. Masinde and Miss Kadenge, there was the contention that Jacob Oduor (PW 28) did not possess sufficient experience considering that at the time of the examination he only had 3 years’ experience and further he did not show the similarities and dissimilarities of the signatures. When the document examiner gave his evidence and the defence was given a chance to cross-examine him, his expertise in this area was not impeached. He defended his findings convincingly.

393. The allegation by the accused persons that the document examiner did not personally take the samples from them is inconsequential. The specimen signatures and the known handwriting and signatures he used as a basis for the examination were produced in court and the accused persons confirmed they were the samples they had given to the investigating officer. He examined them and presented them together with the forensic examination report before this Court.

394. Having reached this conclusion, I now find that the participation of the 1st accused in the commission of the offences of attempt to commit a corruption offence to wit abuse of office in counts 1, 4, and 7 by examining the vouchers P. exhibit 32, 36, 34 and 42 has been established beyond reasonable doubt. I do not find her defence to be truthful.

395. Sophie Wanja Mugwe denied she had appended her signature in payment vouchers as an authorizer in P. exhibit 32, 36,34 and 42 for Alice Wambui Kabugi, Charles Mwathi Muniu, Peter Mwangi Kariuki and Hanah Waithera Njau. She insisted what looked like her signature in the said vouchers was actually forged. She said when explaining the signature appearing in P. voucher for Charles Mwathi Muniu-P. exhibit 39:

“...It might look like mine but it is not my signature...”



396. On cross-examination it was put to her that Malakwen had worked with her for 4 years and had said the signature in P. exhibit 32 looked like hers; she replied:
- “...It might look like mine but is not mine. Yes, he said he had worked with me for 4 years. You can look like you are good outward but inside you are not...”
397. Further put to her that Isaac Sila Mumo (PW 4) had also identified the signature in p. exhibit 32 to be hers, she said:
- “...I heard the testimony of Sila Mumo. He was working in assessment section. This is not my signature and I was not working in the same office with Mumo. I still stand it was not my signature...”
398. Surprisingly when Mumo (PW 4) made that claim in his evidence, his acquaintance with the signature was not challenged by the 2nd accused counsel in cross-examination on the ground that he was not accustomed with the signature because he was not working directly with her. This belated attempt to discredit that evidence on this ground is an afterthought.
399. The fact that two lay witnesses were able to express their affirmative view that the signatures were similar to those that they knew the 2nd accused to use was corroborated materially by the forensic evidence of the document examiner, PW 28- Jacob Oduor who examined the specimen signatures of the 2nd accused against the questioned documents and arrived at the conclusion that they were by the same author. For reasons given, the participation of the 2nd accused in committing the offence of attempted abuse of office in counts by authorizing payment vouchers P. exhibit 32,36, 34 and 42 proved beyond reasonable doubt. She is found guilty and convicted of attempted abuse of office in by authorizing payment vouchers in counts II, V, and VIII.
400. With regard to the 3rd accused, Paul Thuo Kibuna, he claimed that the payment voucher for Alice Wambui Kabugi – P. exhibit 32 was signed by Simba (PW 10) as per the allocation register P. exhibit 49.
401. In response to count VI, that relates to the payment voucher for Charles Mwathi Muniu-P. Exhibit 36; He explained:
- “...It is not true. From the proceedings, it shows the file was verified by Simba-PW 10 and approved by Mugo who is PW 8. Allocation register P. exhibit 48-pg 54 and P. exhibit 49 confirm that...the file when it came to accounts division was created by Ekirapa, verified by Simba PW 10 and approved by Mugo-PW 8. I had nothing to do with that...”
402. However, when Joseph Muthengi Simba(PW 10) testified he stated that the file number 221553- for Alice Wambui Kabugi was in the vote book P. exhibit 48 at pg 96 as per entry of 31/12/2019 showing an amount of Kshs. 958,278.50 against voucher number 2009-10-00744.
403. In the group allocation register for Simba and Mary Mukunya, item 13 on 17/2/2010, the file for Alice Wambui kabugi was indeed allocated to him, he worked on it and passed it to Mary Mukunya who he was paired with on 19/2/2010. He said from the register Mary worked on it on the same day and signed the register.



404. In reacting to P. exhibit 32 which was shown to him and which the 3rd accused now alleges in his defence he conceded having signed, he responded:

“...The payment voucher was examined on 12.2.2010...It was authorized on 14.2.2010. It is not indicated when it was verified. The signature of the verifier is not mine. According to P. exhibit 49, it is me who ought to have verified the payment voucher. I don't know who verified MFI-32 which I was to verify. I don't know who approved (MFI- 49) according to register it is supposed to have been approved by Mary Mukunya. The voucher was paid on 22.2.2010 in cash office...”

405. Considering that examination and authorization payment voucher used to precede verification and approval and there is record per vote book register P. exhibit 48 and the allocation register 49 that procedurally, the voucher should have moved to verification and approval, the fact that records indicated that Simba and Mary Mukunya handled it should despite denial that the signatures in the document did not belong to them; it should have been necessary to subject their signature specimens against that those that were in this document as well. Apparently, neither the signature of John Muthengi Simba nor Mary Mukunya was examined against P. exhibit 32 yet the register showed they were the ones who most probably handled the file at this level.

406. In fact when Malakwen (PW 11) was shown P. exhibit 32 he stated as follows when he looked at the signatures at verification and approval:

“On the face of the voucher, it was verified and approved. On verification part, to me I have a signature here that resembles or looks like the one I knew of Mr. Simba. I had worked with him for two years...”

407. Further, none of the 3rd accused colleagues who testified linked his signature to this particular document-P. Exhibit 32, consequently despite evidence against him as per the opinion of the document examiner with regard to signing -P. exhibit 32, I will in the circumstances give him a benefit of doubt in count III as there was no corroboration of the document examiner's evidence in respect of this count. In view of the above facts, I acquit him of the offence in Count III under section 215 of the Criminal Procedure Code.

408. In respect of count IX, that pertains to payment voucher for Charles Mwathi Muniu-P. Exhibit 36, the 3rd accused stated:

“...From the proceedings, it shows the file was verified by Simba-PW 10 and approved by Mugo who is PW 8. Allocation register P. exhibit 48 pg. 54 and Pg. 49 confirm that...the file when it came to accounts division was created by Ekirapa, verified by Simba PW 10 and approved by Mugo-PW 8. I had nothing to do with that...”

409. John Simba testified on this file. He said in the vote book register-P. exhibit 48 at pg. 54, there was an entry on 3/2/2010 in respect of Pension number file number 223557 for Charles Mwathi Muniu in regard to payment voucher number 2009/10/010806 for Kshs. 1,440,635.20. The file was allocated on 3/2/2010 in the group allocation register, P. exhibit 49, item 74, he verified the voucher details on 5.2.2010 and passed it to Mugo for approval, he worked on it and passed it the same day to cash office.



410. When John Muthengi Simba PW 10 was shown P. exhibit 36 for an amount of Kshs. 2,354,797.70 he said:

“...The voucher was examined on 7.2. 2010. I am not familiar with this examiner’s signature. I am also not familiar with approver’s signature. It was authorized on 10.2.2010. I don’t know who verified the voucher...According to my register, the person who should have verified it ought to have been me. According to the register, the person who should have approved the claim is Mr. Mugo. The signature in the voucher is not Mugo’s...The payment voucher was paid on 22/2/2010...”

411. On cross-examination he was confronted with the above facts in relation to his claim that Simba verified P. exhibit 36 and Mugo verified, he was asked to check the date of verification as per the allocation register –P. exhibit 49 which was 5/2/2010; yet in P. exhibit 36, examination and authorization both process must precede verification in voucher – P. exhibit 36 was 7/2/2010 and 10/2/2010 respectively. He thus admitted:

“...then what he verified is not before court, it appears what he verified is not this one...”

412. Who therefore verified this voucher? According to Malakwen (PW 11) he stated:

“...verification was done via signature like that of Kibuna, the 3rd accused...I worked with Kibuna for over 3 years and I was acquainted with his signature. Payment per cash office stamp is on 22.2.2010...”

413. The 3rd accused attempted to discredit Samuel Malakwen by volunteering information that he was not a reliable witness. He said sometime in 2004, while he was working in revenue collection, Malakwen made a Government official receipt MR 0429924 to disappear. He reported him to his boss then Mr. Murahim but the matter was watered down. He then concluded:

“...so when Malakwen alleges he is able to recognize my signature in payment voucher is not true...”

414. However, he admitted on cross-examination that he did not confront Malakwen with those allegations when he testified which makes it impossible for the Court to verify. It was most likely post-scripted. The evidence of Malakwen cannot be tainted on issues not taken up with him when opportunity to put them to him was there but never raised. That matter should have been put directly to him.

415. This Document examiner, Jacob Oduor’s evidence gave credence to the non-expert evidence of Malakwen (PW 11) who was acquainted with the signature of 3rd accused for at least 3 years. The court finds the charge in count IX thus proved despite 3rd accused despite his spirited denials.

416. Lastly in the series of these offences is Count XII- in respect of payment voucher P. exhibit 42 for Hannah Waithera Njau.

417. The 3rd accused was implicated by three of his colleagues who testified that the signature in the said P. exhibit 32 was like the one they used to see him sign on documents.

Peter Wanyahe Mwangi- (PW 7) said:

“...It appears to have been verified by Mr. Kibuna. I was familiar with Mr. Kibuna’s signature...”



Samuel Kuria Mugo (PW 8) stated:

“...The voucher was also verified, the signature resembles that of Paul Kibuna, I was familiar with his signature having worked with him since 2007...”

418. In addition, there was Malakwen (PW 11) who upon being shown P. exhibit 42 remarked:

“...It went for verification and the signature appearing resembles that of accused 3”

419. The avalanche of evidence against the 3rd accused in this payment voucher from his own colleagues who worked with him and were thus accustomed to his own handwriting is compelling enough to find that he was a participant in the alteration that was done on the payment voucher in order to confer a benefit improperly. I find him guilty of an attempt in Count XII.

420. I will now deal with count XIII and XIV touching on the 4th accused alone. The pension files in respect of the two counts were neither traced nor were the payment vouchers used to process the pension. The 4th accused is charged with preparing the schedule control reports which were used to process the G-pay in which the inflated amounts of pension gratuity was transmitted to the two pensioners, Meshack Ayub Okemwa and Simon Kamande Mwangi. These were the two schedule control reports are 444112- P. exhibit 7 and Schedule control report number 444998- P. exhibit 3 respectively. Unlike the pensioners in counts I to XII, these two actually received the amounts in issue and one Simon Kamande Mwangi (PW 23) even confirmed having met certain late Mrs. Wakaruga from Pensions Department and parted with some huge chunk of those proceeds.

421. As to whether an offence was committed in respect of the payment to Meshack Ayub Okemwa and Simon Kamande Mwangi, it is obvious from the evidence on record that indeed the offence charged was in fact actualized.

422. Evidence led by the Prosecution demonstrated that the actual pension lump sum gratuity entitlement for Meshack Ayub Okemwa had been worked out by a Senior Pensions Officer, Paul Ndambuki Muturi (PW 5) and pegged at Kshs. 663,071.00 per the pension benefit computation appendix which was retrieved from the system and confirmed by him- P. exhibit 37. Moreover, from the G.P. 178 received from the pensioner's former employer, TSC, the pension payable to him could easily be established.

423. Julius Nzioka (PW 9) another Senior Pensions Officer attested as much with regard to Simon Kamande Mwangi and produced the system generated pension computation appendix dated 14/8/2009 before arrears was Kshs. 896,280 –as per P. exhibit 47.

424. In respect of Simon Kamande Mwangi, two schedule control reports were found, under schedule number 443997 (P. exhibit 1) Kshs. 1,023,578 was the amount that he was supposed to be paid in that schedule but on another one, schedule number 444998- P. exhibit 3 the amount was increased to Kshs. 2,023,578.60. It is this second schedule that accompanied the G-pay for transmission of the said amount of Kshs. 2,023,578.60 to Simon Kamande's Equity Bank Account, at Thika. The G-Pay (P. exhibit 50) was taken to Central Bank on 22.12.2009.

425. For Meshack Ayub Okemwa, schedule control report 444112 of 29/1/2010-P. exhibit 7 was prepared, and accompanied the G-Pay of 5/2/2010 (P. exhibit 8) that facilitated transfer of Kshs. 1, 727, 007 to his KCB Bank Account at Kisii.

426. Both Pensioners attested to this fact, and produced bank statements, Kamande's Bank Statement P. exhibit 67 showed there was credit entry of Kshs. 2,023,578.60 on 24/12/2009. Meshack Ayub



- Okemwa's Bank Statement- P. exhibit 64 confirmed credit entry of Kshs. 1,727,007.30 on 8/2/2010. They withdrew this money.
427. The fact that there was hiking of the amounts paid to Meshack Ayub Okemwa and Simon Kamande Mwangi is clear from the huge difference between what they received in their bank accounts and what the Pension Department Officers, PW 5-Paul Ndambuki Muturi and PW 6-Julius Nzioka had assessed.
428. When schedule numbering register for cash office 2009/2010- P. exhibit 2 page 20 serial no. 443997, 443998, 444112 among others was compared with the known and specimen signatures of Edward Amian Ongati 9(4th accused) they were found to be similar and made by the same person by the document examiner, Jacob Oduor (PW 28).
429. The generation of schedule schedules which was the work done by the 4th accused involved feeding the pension file numbers into the system followed by confirmation that the information on the system was consistent with what was in the payment voucher and supporting documents according to PW 12, Gerald M'Ikunyua, Chief Accountant Pension Department, who stated:
- “...These schedules have a provision for two accountants to signify that the claim paid is in accordance with the files which are attached and that the various items in that schedule are fully supported...”
430. There was a difference between this position as stated by the Chief Accountant in charge of Pension Department and that which was offered by Catherine Bibiana Kalali (PW 18) who was Cashier in Charge of Cash Office and the immediate supervisor to the 4th accused, who on her part explained:
- “...The paying Officer was to key in the pension number in the system, compare what was in the system with what was in the voucher. If it was okay, he was supposed to approve. It was payment voucher which was with the whole file...”
431. After that, the paying officer was to print the schedule and pass it to over an examiner. She explained what the examiner of the generated schedules was required to do:
- “...The officer examining the schedule was supposed to check if the vouchers were tallying on the schedule i.e. if the voucher was the same as in the schedule i.e. every detail of payee especially name and amount...”
432. The examiner would then prepare and sign an EFT request schedule report analysis report to enable the next officer commence the G-Pay, return the same to paying officer to print final schedule and forwarding to next level of G-pay.
433. The 4th accused, Edward Amian Ongati (DW 4) in his defence stated that he was a paying officer working under PW 18, Catherine Bibiana Kalali who was the cashier inn charge of cash office. He stated he could not create schedules since they were automatically generated by the system immediately he entered the first pension file number, the system provided all the other details which used to compare with what is in the physical voucher. He said he was not the one entering the figures in the schedule in respect of what was supposed to be paid. He stated that all he was required to do was to ensure the voucher was original and had been examined, authorized, verified and approved with all the sections duly signed. He said that is why he paid the Pensioners in counts I, II, III, IV, V, VI, VII, VIII, and IX because when their files reached cash office, their vouchers had all the required signatures. He said for pensioners Simon Kamande Mwangi and Meshack Ayub Okemwa, the Investigating Officer did



not show him any proper signed payment vouchers, instead he showed him what he described in the office jargon as “laughing vouchers”, meaning blank vouchers that are not signed (P. exhibit 5 a & 6 a). He said the Investigating Officer did not provide the original vouchers which would have used to demonstrate why he acted on them yet he went ahead to charge him.

434. He testified it was not his responsibility to examine the G.P. 178. He only realized that the amounts were exaggerated when the Investigating Officer called him at the Anti-Corruption Offices.

He also restated on cross-examination by 2nd accused as follows:

“...my limit was the vouchers and the system that was my limit... a single person could not check the entire file. I could not have managed that...”

435. He said in the cash office, he was the first person. When he ‘paid’ any voucher, it had to be checked and information also had to be entered into electronic format and sent to Central Bank. If there was any mistake, the cashier could not have prepared the G-Pay yet in this case, the cashier had prepared the G-Pay for all the pensioners who were paid.

“...It is not possible that I could have paid Kamande and Meshack without checking by Malakwen and Robina. If they had discovered anything, my cashier, Catherine could have not prepared the G-Pay. She should have remanded the schedule...”

436. Concerning his signatures in the register, he affirmed they were his and did not dispute them:

“...I am not denying I paid the files, I have no problem with the handwriting in the register. It is proof I received the files...”

437. In the submissions of Mr. Onsongo for the 4th accused, he began by faulting the particulars of the charge which he stated they were not in accord with the evidence in that it the accused was charged with “preparing a payment schedule number 444112 in count 13 & 444998 in count 14”, yet there was no way the accused would have prepared the schedule because the system was programmed such that his only role was to compare the payment vouchers in the system and hard copy to see if they tallied.

438. As a fact, the 4th accused was required to do the checking to ensure accuracy by comparing the hard copies with the information in the system prior to printing the schedules and forwarding to the examiner. The fact that he could not be expected to generate an inaccurate schedule means the schedules he was generating was not a mechanical process as wants to portray, that in my view qualifies to be termed an act of preparation of those schedules on the part of the 4th accused. The submission to the effect that the charge is defective for using the word “prepare” as being inconsistent with evidence is in my view misleading.

439. The explanation by the 4th accused that he was only limited to looking at the contents of the voucher and the supporting documentation to the payment files in the face of the explanation by the Chief Accountant, PW 12-Gerald M’Ikunyua who said the schedules had to be checked to ensure they were ‘in accordance with the files which were attached and that the various items in that schedule were fully supported.’

440. When PW 12 testified and affirmed that position in Court, the 4th accused did not on cross-examination seek to contradict him on that position yet when the 4th accused was asked by the 2nd accused who



defined to him the restricted roles he was propounding before the Court, he vividly declared that it was the Chief Accountant. He answered her:

“...My limit was to get the file and remove the voucher and compare with the system. That is why they brought new officials to be doing that work of counter-checking...in an office we had job descriptions, one had to do their part. My job description was to compare the voucher and the system. It was the Chief Accountant who told me that...”

441. Since therefore, it was the Chief Accountant defining and assigning the responsibilities, it follows that 4th accused assertion and that of her immediate superior, PW 18 Catherine Bibiana Kalali was in sharp contrast with the person who assigned those duties, the Chief Accountant (PW 12). The 4th accused and PW 18's position, Catherine Bibiana Kalali cannot thus stand as it misrepresents what the issuer of those instructions clearly spelt out. Cross-checking by the 4th accused was thus much more expansive than the 4th accused and PW 18, told this Court; that checking extended to ensuring that the payments in the schedules were ‘in accordance with the files which were attached and that the various items in that schedule were fully supported.’
442. This Court takes the assertion of the Chief Accountant, PW 12 as the factual position. In any stage of the Pension Management system where the payment voucher moved with the pension file, there was an obligation on any person with that payment to ensure the payment was in tandem with other documents supporting the payment in the file. That was a control measure which even the 4th accused was not exempted from. His defence that his role was limited to checking only what the system vis-à-vis the payment voucher and that this was not expected to encompass any supporting documentation yet an entire pension file would be at his disposal is not plausible. What then would have been the essence of transmitting the entire physical file including making electronic file in the system accessible to him at the time he was doing the cross-checking?
443. The only people who did not bear such an obligation were those who came in after the commencement of G-Pay because once EFT schedule analysis report was printed confirming the process of examination of the schedule control reports was completed, that marked the end of the movement of pension files. It signified everything else in the Pension Information Management System was correct having gone through hands and the eyes of those officers in the long lineup giving way for the G-Pay process to be commenced purely for purposes of transmitting money to the beneficiary accounts of Pensioners.
444. The 4th accused should thus be grateful that the Investigating Officer did not even bother prefer charges against him in relation to payments made in counts I to XII because he had paid those vouchers and generated those schedule control reports when there were other supporting documents in the pension files that passed through him that should have stopped him from proceeding with those payments had he referred to the supporting documentation while cross-checking the schedules. The fact that he was not charged even in counts I to XII does not connote any absence of culpability.
445. Accordingly, the examiners who checked and validated those schedule control reports before returning them to the 4th accused for final printing and even further to complete the EFT request schedule analysis confirming the examination of what was contained in those payment schedules and the payment voucher together with the corresponding supporting documents in pension files was in order should have been called to account. It's no wonder in his defence, accused stated:

“...It is not possible that I could have paid Kamande and Meshack without checking by Malakwen and Robina. If they had discovered anything, my cashier, Catherine could have not prepared the G-Pay. She should have remanded the schedule...”



446. To this end, I find this to have been a well-orchestrated conspiracy that involved several officers, accused included.
447. That lineup includes PW 11, Samuel Kibyego Malakwen who examined the schedule control number 444112- P. exhibit 7, compiled the EFT schedule control analysis report–P. exhibit 51 which contained that particular schedule among others. He examined it and approved it to proceed to the next level of G- pay and thus facilitated the improper payment to Meshack Ayub Okemwa. It is thus not surprising that the preliminary investigator, PW 29, Pascal Mweu in his preliminary report had recommended that Sammy Kipyego Malakwen be charged. Malakwen was an accomplice turned a prosecution witness in this trial.
448. In Simon Kamande’s case, although the schedule numbering register for cash office- P. exhibit 2, did not show who had examined schedule number 444998- P. exhibit 3 (the schedule which substituted a previous schedule and came up with the inflated payment to Simon Kamande); the EFT schedule control report- P. exhibit 52 in which this particular schedule control report was included showed that same had been examined by Catherine Bibiana Kalali (PW 18). It means after the 4th accused cross-checked and generated it, he passed it over to Catherine Kalali to examine it; hence she also had an opportunity seeing the pension file of Simon Kamande Mwangi when she was examining this particular schedule as the schedules plus payment vouchers and the pension files were moving together. After that, she prepared the EFT schedule analysis report-P. Exhibit 52 that listed this schedule control report number 444998-P. exhibit 3 and in fact, against this particular schedule control report, she wrote “OK”. She had the opportunity of having Kamande’s file with her at the time of the examination of that schedule control report. She compiled the EFT schedule analysis report confirming she had examined all the schedules therein against the vouchers and supporting documentation and found them in order. In fact, when Mr. Onsongo for 4th accused raised this issue with her during cross-examination, she appeared cornered and startled then responded evasively as follows:
- “...from the register, it shows schedule 443998 was not examined. I had to examine the schedule. The original would have shown if it was examined or not. From the register, it shows it was not examined. If I may say the truth, this time I was on leave...”
449. Just like Sammuell Kipyego Malakwen (PW 11), Catherine Bibiana Kalali (PW 18) was an accomplice in the commission of this crime. In fact, the substitution of schedules numbers 4444997-P. exhibit 1 with schedule number 444998-P. exhibit 3 was out rightly incriminating on the 4th accused and Catherine Kalali. For the payment to Simon Kamande to be enhanced, the schedule with the correct assessment was discarded and Kalali and 4th accused were involved in generation and examination of the substitute schedule number 444998-P. exhibit 3 yet according to the evidence of the Chief Accountant, Gerald M’Ikunyua (PW 12) the act of replacement of schedule and transferring items from one to other was irregular and should not have occurred without proper authorization. He said:
- “...The schedule in MFI- 1 does not appear in EFT request. This would signify that schedule 443997 the content was changed/ substituted where some of the items moved to schedule 443998. That was not regular.
- Before such movement can be allowed, there could have been an official request from cash office to have one of the invalid schedules to be destroyed. There was no such request made, I don’t see any...”
450. The failure by the 4th accused and PW 18 to seek official authorization before generating another schedule, examining it and replacing the previous schedule with one that had inflated amount was not



- coincidence, it was a calculated with ulterior motive of committing the fraud that turned out to be the money that was sent out to the pensioner and followed up by other accomplices in the Pensions Department. This court finds both offences against the 4th accused, in count XIII and XIV proved beyond reasonable doubt; it finds him guilty and convicts him accordingly for the reasons afore-stated.
451. In conclusion, this Court would like to observe that what was happening at Pensions Department was very huge deep rooted conspiracy that ran quite deep; the Investigating Officer by identifying the four accused persons only, though they duly played their part and participated in committing these crimes, had merely scratched the surface and this is demonstrated by the high number of accomplices that can easily be picked out even on evidence before the court alone.
452. Take for instance the role of Mr. Andrew Opiyo (PW 3) who was in charge of IT Unit in the Department. He explained that the switching off of the audit trail was done by the consultant because the system was experiencing memory problems. How credible was that explanation? There was no documented report, either generated from the system or by way of any communication exchanged between the consultant and Mr. Opiyo as the in charge of the IT Unit to show the system was experiencing such memory related challenges that demanded this drastic decision whose effect was compromising the entire security of the Pension Information Management System be taken. As the person overseeing the implementation of that IT system, he did not provide even a copy minutes or a single memo to him by his staff or the consultant highlighting the existence of such challenges. None of the IT staff called as witness in this case confirmed the system had memory related challenges at any given time. It is also curious that Mr. Opiyo appears to have been made the disclosure when these offences were detected and the investigator appears to have swallowed that, hook, line and sinker. He seems not to have bothered to ask any hard questions.
453. That switching off of the audit trail meant that people who aided in manipulating the process through the digital platform could not be traced and I believe that's how, despite resounding evidence from IT staff who testified here as witnesses that those crimes could not have been committed without the aid of IT personnel, not a single IT staff was charged.
454. There was also the fact that the pension file of Simon Kamande and Meshack Ayub Okemwa together with the vouchers used to process the payments were not found. Why the Investigator did not pursue the registry personnel who had custody of pension files after the process of payment was completed or those charged with safe keeping of the ledger where payment vouchers and schedules control reports would be kept was not clear to this Court.
455. Further, the Investigating Officer appears to have adopted a casual approach to the issue of the people who were actually identified in the preliminary report of Mr. Mweu (PW 29) as being the personnel from the Pensions Department that met with PW 23, Simon Kamande and collected part of the proceeds of the excess pension paid to him. This provided him with a perfect opportunity of directly unraveling what was happening at the Pension Department at the time but it is unbelievable that he seems not to have pursued that angle vigorously.
456. Nevertheless, the fact that it appears there other many fellow conspirators who were not charged cannot excuse the four accused persons whose culpability for the crimes they committed has been proved beyond reasonable doubt and will therefore have to take responsibility for the part they also played.

JUDGMENT READ, SIGNED AND DELIVERED IN OPEN COURT THIS 8TH DAY OF APRIL, 2020

L.N. MUGAMBI (MR)



CHIEF MAGISTRATE

8/4/2020

Sentence

458. This matter came up for sentence today and the proceedings conducted via video-link with agreement of all the parties involved. The court prosecutor, Ms Christine Gakobo in her address to the court informed the court that the accused persons are first offenders with no previous criminal records.
459. She nevertheless asked the court to take the consideration that these are very serious offences for due to actions of the accused persons in committing these offences, pensioners suffered a great deal on the processing of pension which was delayed for a very longtime.
460. In regard to sentencing at the 4th accused, she urge the court besides applying the general penalty under section 48 (1) of ACECA to equally apply and sentence him under section 48 (2) which is twice the value of the quantifiable loss as in both counts X111 and X1V- there was quantifiable loss occasioned.
461. The mitigation by all counsels and the additional mitigation by the accused persons themselves was allowed. This was on the appreciation of the fact that due to the current Covid-19 pandemic facing the country, Prison visit are no longer allowed and advocates have had no benefit of meeting their clients for face to face- interview.
462. The court therefore gave the chance to accused persons to personally add to what counsel may have left out in mitigating their sentence.
463. For all accused persons, counsels were able to bring out effectively their case; that they suffer from various medical conditions. Indeed, medical documents were submitted to the court electronically by mail support this fact. It was also brought out in the submission of counsels that accused persons are remorseful and the fact that they come from various family background faced with so much challenges.
464. To state the fact as it is, the mitigation by the accused persons which they personally/directly rendered to the court had a very personal touch and was quite moving.
465. The plight of the 14 year old daughter to the 1st accused who suffers from cerebral palsy stood out and the court empathizes with her condition. The love for this child by the mother, the 1st accused was clearly palpable in these proceedings.
466. There were submissions made on law and authorities cited by advocates which I have taken into account.
467. I am persuaded that inspite of the seriousness of these offences, 1st offender should always be given a second chance to reform. Indeed, I am grateful to counsels for referring this court to the sentencing guidelines which clearly stipulate the dos and don'ts in sentencing. At paragraph 11.5 which Mr. Masinde referred to, it is provided as follows in the sentencing guidelines.
- “Where the option of fine is provided, the court must first consider it before proceedings to impose a custodial sentence. If in the circumstances a fine is not suitable sentence, then the court should expressly indicate so as it proceeds to impose the available option”.
468. If this case, was fine suitable? The answer is in the affirmative firstly because, they are 1st offenders.
469. Secondly as stated by them, in their mitigation they conducted themselves well throughout the entire course of the trial.



470. Thirdly, I have considered their mitigation, they have burdensome family responsibilities of various kinds, their families need them and they actually need a second chance to re-evaluate their conduct and reform.
471. The other factor that I consider, though not submitted by the advocates was that 1st, 2nd and 3rd accused were actually convicted of attempt to commit a corruption offence under section 46. Although they participated in the process that was manifestly geared to committing a criminal offences by examining, authorizing and approving the voucher that contained the excess fraudulent pension payments, and actually the money got transferred from the pension account for transmission to the intended beneficiaries, the offence was not completed or successful because central bank recalled the money at the 11th hour. They therefore did not benefit from the crime nor were their cohorts despite putting in motion an elaborate scheme to siphon out public resources.
472. As for the 4th accused, M/s Gakobo submitted that because there was quantifiable loss, the court should apply section 48 (2) and slap him with the mandatory amount of twice the loss occasioned.
473. That was excess fraudulent pension paid to Meshak Ayub Okwema in count X111 and Simon Kamande in court XIV.
474. The question is, was the 4th accused single handedly the person who occasioned this loss?.
475. There is no doubt, and the court found as a fact that 4th accused did play a part in the commission of these offences in his position as the paying officer.
476. However, the court did find out quite clearly that her own boss at the cash office then, did in fact play a major role in commission of the offence framed as count X1V. Further, Malakwen his colleague also had a role to play in relations to count X111.
477. That notwithstanding, the court did mention that there were ICT officers whose participation in these offences was clear-cut but they were not charged.
478. Persons who actually went to collect part of the proceeds of that fraudulent payment from Simon Kamade despite being identified were left out of prosecution.
479. In my view, despite the 4th accused playing his role in this criminal scheme, it would be unfair for this court to sentence him for the entire loss of this money where it is so clear that indeed, accomplice who should have answered for this loss together with him were left out.
480. I thus find that section 48 (2) in the circumstances would not apply to him only as doing so would orchestrate an injustice in view of the findings of this court.
481. Having said so, I now sentence the accused persons as follows:
- 1st accused: In count1, count 1V, count V11 and count X.
1. Count1: A fine of Kshs 100,000 (one hundred thousand in default) eight (8) months imprisonment.
 2. Count1V: Fine of Kshs one hundred thousand (100,000/=) in default eight (8) months imprisonment,
 3. CountV11: Fine of Kshs one hundred thousand (100,000/=) in default eight (8) months imprisonment.



4. Count X: Fine of Kshs one hundred thousand (100,000/=) in default (8) months imprisonment.

2nd accused -

1. Count 11: Fine of Kshs one hundred thousand (100,000/=) in default eight (8) months imprisonment.
2. Count V: Fine of Kshs one hundred thousand (100,000/=) in default eight (8) months imprisonment.
3. Count V111: Fine of Kshs one hundred thousand (100,000/=) in default eight (8) months imprisonment.
4. Count X1: Fine of Kshs one hundred thousand (100,000/=) in default eight (8) months imprisonment.

3rd accused: He was acquitted in count 111. He shall pay fine of the following other counts as follows:-

1. Count V1: A fine of kshs one hundred thousand (100,000/=) in default eight (8) months imprisonment.
2. Count 1X: Fine of kshs one hundred thousand (100,000/=) in default eight (8) months imprisonment.
3. Count X1I: A fine of Kshs one hundred thousand (100,000/=) in default eight (8) months imprisonment.

4th accused: For the fourth accused, the substantive offences were actually completed. It was not an attempt as the fraudulent money actually reached the targeted beneficiaries.

However, taking into account that this was a criminal scheme or conspiracy which he was not involved alone, but there were others, as I have said, I will not entirely blame the loss on him and thus decline to impose the mandatory sentence as recommended by the state. I will impose sentence under section 48 (1) as follows:

1. Count X111 - A fine of Kshs two hundred and fifty thousand (250,000/=) in default one (1) year imprisonment.
2. Count X1V - A fine of Kshs two hundred and fifty thousand (250,000/=) in default one (1) year imprisonment.

482. In default of payment of the fine, sentence shall run Consecutively.

483. In meting out the sentences, the court also took into account the period the accused have spent in remand.

Finally, as recommended by Mr Masinde, I hope the DPP and the relevant investigate agencies will peruse through the findings of this court and investigative other persons who were involved in this criminal scheme.

L.N. MUGAMBI (MR)

CHIEF MAGISTRATE

8/4/2020



Mr. Githinji: On behalf of state, we request for certified copy of Judgment to be sent via-email.

Mr. Masinde: Mine is to thank the court for expeditious manner trial has been conducted and we are most grateful.

The 1st and 2nd accused would like to apply for discharge of securities deposited as bond.

Mr. Onsongo: I am thankful for your decision and considering all circumstances. I apply for certified copies for proceedings and judgment. The surety is also requesting to be discharged and title deed be released.

Ms Kadenge: I apply that title deed deposited to the court be returned to the depositor.

Court: Title and documents deposited by the depositors as security for bond to be returned to the depositor.

Certified proceedings and judgment plus the sentencing proceedings be supplied to the parties as prayed.

L.N. MUGAMBI

CHIEF MAGISTRATE

8/4/2020

