



REPUBLIC OF KENYA

IN THE CHIEF MAGISTRATES COURT AT NAIROBI

MILIMANI LAW COURTS

ANTI-CORRUPTION CASE NO 36 OF 2011

REPUBLIC.....COMPLAINANT

VS

JANE WANZA MUMO.....1ST ACCUSED

CHRISTINE CHACHA.....2ND ACCUSED

JUDGMENT

This judgment only relates to Count 1 against the 1st Accused, the Court having disposed off the other charges under Section 210 CPC in its Ruling of 6/12/2018.

The 1st Accused *Jane Wanza Mumo* is charged therein with the offence of deceiving principal contrary to section 41(2) as read with Section 48 of the Anti-Corruption and Economic Crimes Act 2003, (*Hereinafter – ‘ACECA’*)

The Section provides as follows:

41. Deceiving principal

(1).....

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

Particulars to the charge are as follows;

JANE WANZA MUMO: On 3rd October 2008 in Nairobi City within Nairobi County, being employed in the public service as an Assistant Director of Education, in the Ministry of Education, to the detriment of the aforesaid Ministry, gave the said Ministry a document, to wit, a Surrender of Imprest Voucher No. 002467 dated 3rd October 2008 that she knew contained false or misleading information.

The record shows that the 1st Accused, alongside her then co-accused denied all the initial charges at plea on 25/11/2011 and a trial ensued on 3/5/2012 before Hon. (Mrs) L. Nyambura, SPM (as she then was). She heard six witnesses before Hon D. Mulekyo, SPM (as she then was) took over the trial on 29/10/2012. I took over from Hon Mulekyo on 12/6/2015 when 13 witnesses had testified.

On 21/7/2015 I issued a direction that the hearing would proceed to conclusion from the point previously reached by my predecessor, following election in that regard by the Accused.

At close of its case, the Prosecution had called a total of 29 witnesses and produced numerous documentary exhibits in support thereof.

In her defence the 1st Accused requested to file, serve and adopt a written unsworn statement on account of continuing ill-health which I permitted to mitigate delay already suffered in this matter.

The 1st Accused has previously been represented in this trial by Mr Oluoch and more recently by Mr Oketch. The Prosecution on behalf of the State has all along been led by Ms Gateru, Prosecuting Counsel.

These charges revolve around a Capacity Building Training Workshop on Management of Instructional Materials in Secondary Schools that was held at Nyeri Technical Training Institute (hereinafter 'Nyeri TTI') between 25/8/2009 and 15/9/2009 as part of a country-wide series approved by the Ministry of Education (Hereinafter- 'The Ministry') in the year 2008.

The target group for the Workshop was *inter alia* secondary school principals, members of school boards of governors (BOG) and parents teachers association (PTA), and Quality Assurance Officers from District Education Offices.

Michael Gaiithu Njungu (PW 2) confirmed that Nyeri TTI where he was then Deputy Principal was contracted by the Ministry to host the Workshop, covering full board accommodation, hire of hall and conference rooms. The Institute handled a total of 198 participants and was fully paid.

It is also his evidence that Nyeri TTI made arrangements with, and paid local hotels to accommodate participants from 3/9/2008.

He was shown three receipts indicating that they were issued by Nyeri Mordern Hotel on account of accommodation and denied any knowledge of them, adding as follows;

'...We were only accommodating participants and not organizers...'

He stated as follows under cross examination by Mr Oluoch then for the 1st Accused;

'...When the participants were in Nyeri, I was admitted in hospital and was not at the institute...'

It is not in controversy that the 1st Accused, then an Assistant Director of Education (ADE) was assigned by the Ministry as the Co-ordinator of the Workshop, and for that reason, was entrusted with workshop funds in the sum of ksh 1,675,000/- through a Temporary Imprest Warrant No. 818211 (Pros Exh 2).

George Oyaro Haya (PW 1), then the Ministry's Chief Accountant confirmed that he approved the payment of the Imprest

amount to the 1st Accused and the amount was paid. He also testified that he later approved a Surrender Voucher (Pros Exh 3) in the names of the 1st Accused (Pros Exh 3).

Pros Exh 3 is a Payment Voucher No. 002467 in the names of the 1st Accused. It has a number of annexures including a copy of the workshop programme, showing that each workshop event lasted three days. The Workshop programme also shows a number of presentations each of which was handled by a 'Resource Person'. I will address this latter aspect later.

There is also annexed to Pros Exh 3, the countrywide approved Budget Summary for the workshops showing a budget amount of ksh. 11,813,000/-One of the items comprised in this sum is described as '*accommodation for 12 Resource Persons x15 days @5000x3 regions*' which I will also revert to later.

Further annexed to Pros Exh 3 is an expenditure Summary as follows;

S/NO	ITEM	RECEIPTS (KSH)	PAYMENT (KSH)	BALANCE(KSH)
1.	Per Diem for 20 days	70,000.00	70,000.00	-
2.	Co-ordination Allowance 2000x15 days	30,000.00	30,000.00	-
3.	Air Time @ksh 5000/-	5,000.00	5,000.00	-
4.	Transport Reimbursement @800x200px	160,000.00	159,700	300
5.	Facilitation@ 240,000x4 Classes	960,00.00	960,000.00	-
6.	Stationery @ 150,000.00	150,000.00	147,756.00	2564.00
7.	Accommodation for 4 Resource Persons @ksh 5,000.00	300,000.00	300,000.00	-
	TOTAL	1,675,000		2544.00

A Miscellaneous Receipt No. 9082558 in the name of the 1st Accused shows that she surrendered an Imprest balance of ksh 2544/- as reflected in the expenditure summary.

In relation to the expenditure items relating to Stationery and Accommodation for Resource Persons, there's annexed to Pros Exh3, a Receipt dated 25/8/08 for the sum of ksh 147,436/- issued on its face by Nyeri Enterprises and three other Receipts dated 29/8/2008, 2/9/2008 and 6/9/2008 issued by Nyeri Mordern Hotel each for the sum of ksh 100,000/-on account of half-board accommodation for 4 persons for five days at ksh 5000/- per day.

Evidence shows that Pros Exh 3 was processed in the normal manner and passed.

John Murithi Mbogo (PW 18), an Accountant II and Voucher Examiner at the Ministry during the time material to this case testified that he examined Pros Exh 3 and identified documents that were attached to it including transport reimbursement schedules for participants (Pros Exh 9, 12, 19, 21 and 26), four payment schedules for facilitators (Pros Exh 15, 16, 17 and 27), the three Receipts issued by Nyeri Mordern Hotel and one by Nyeri Enterprises.

He confirmed that he computed the totals against the attached budget and was satisfied and passed the document to the next stage, which was Vote Book Control.

He further confirmed under cross examination that when he examined Pros Exh 3, the part where the signature of the AIE Holder was appended had white-out.

The bulk of witnesses called to testify herein were participants in the Nyeri TTI Workshop. These are PW 3 to PW 8, PW 10 to PW 16, and PW 19 to PW 23.

Their joint testimony is that they attended the Nyeri TTI Workshop after receiving invitations mostly from their local office of the DEO.

They all identified self-written details and signatures in Attendance Registration Forms- Pros Exh 8, 11, 18 and 20 and were specific that they did not give their national identity card numbers during registration, a matter appears to be confirmed in Pros Exh 8, 11, 18 and 20 which do not show a column for that detail.

All further jointly testified that they received no payment at the venue and denied in their entirety, the contents of Payment Schedules exhibited herein as Pros Exh 9, 12, 19, 21 and 26.

Pros Exh 9, 12, 19, 21 and 26 are Payment Schedules showing that attendees to the Nyeri TTI Workshop were paid and signed for transport reimbursement amounts ranging from ksh 600-ksh 1200/-. The documents also show a column with national identity cards for each such payee.

Amongst these witnesses was Martha Muthoni Mukundi (PW 3), Principal Kagumo Girls Secondary School in Kirinyaga District. She identified her self-written registration details and signature at item 30 in Pros Exh 8. She denied receiving and signing for the payment of ksh 600 in item 5 of Pros Exh 9- A Payment Schedule. She admitted under cross-examination that the national identity card number on the Schedule was hers but she had not given it out.

Similar testimony is given by Kibethi P.G Nyamu- PW 4- Principal of Kaboge Secondary School also in Kirinyaga whose registration details are at item 25 in Pros Exh 8 and purported payment of ksh 600/- and details at item 40 of Pros Exh 10. Others are

PW5 – Grace Warui Kinyua, PW 7- Gerishon Nyagia Rebecca PW 20- Simon Lucas Mburu, and PW 21- Lawrence Kiwara Kariuki.

Reverend Arthur Maina Mwangi- (PW 6)- who testified that he was the Principal Kamachara Secondary School in Murang'a District, in addition to denying his signature and payment on Pros Exh 12 item 10 also denied the national identity card reflected therein namely 38043322 and stated his correct one as 3603954. Similarly Esther Nyawira Ngatia (PW 8) – Principal St Anne's Gituba Secondary, Kirinyaga District denied that national identity card no. 5924359 shown against her particulars in Pros Exh 9 item 30 was hers, stating her correct one as 4400716.

Jane Kaniaru Ikiara (PW 13) and Wilson Kamunya Karitu gave similar evidence.

Mary Njeri Gacuma-PW 12 - the PTA Chair of Githunguri High School within Thika District identified her self-written particulars and signature at item 14 in Pros Exh 18. She denied her signature and purported payment of ksh 800/- at item 16 in Pros Exh 19.

She seemed to resile from her denial of payment when she stated as follows under cross examination;

'...I state on the last day of the workshop I was paid Kshs.500/= transport reimbursement and that I signed and appended my ID Number I had forgotten this, it was a long time ago, I was not prepared, I was caught off guard when asked to come and testify. I now re-call more than 50 people were reimbursed their travelling expenses...'

Thomas Githinji Gicheru PW 19-, a Quality Assurance and Standards Officer then based at Murang'a District testified that he was involved in the invitation of Principals for the Nyeri TTI Workshop which he also attended on 8/9/2009. He identified Facilitators at the Workshop as Jane Mumo and Christine Chacha although he was unable to physically identify them in Court. He identified his registration details at item 13 of Pros Exh 11 and denied the payment and signature reflected against his particulars at item 13 of Pros Exh 12.

He stated as follows;

'...I do not recall any arrangements to reimburse participants with transport...'

Under cross-examination, he expressed surprise that his national identity card document was on the payment schedule- Pros Exh 12, yet he had not given it out.

He confirmed that at the Workshop participants were organized in groups by District, and agreed that his Group Leader was one Mwangi. He denied that Mwangi had his Group's transport money.

Elkanah Nyagah PW 28- testified that in 2008 he was based in Nyeri as a senior ministry official in charge of secondary administration. He received instruction from then Acting Director of Secondary Education Ms Concelia Ondieki (not a witness) to organize a Seminar and to get in touch with the person who was in charge Ms Mumo. Later he realized Ms Chacha (formerly 2nd Accused) was also in charge.

He identified the workshop venue and made calls to DEOs and Principals and was also responsible for the transport and comfort

of the 1st Accused and Ms Chacha during the workshop.

Under cross examination on behalf of the 1st Accused, he stated as follows;

‘...They were expected to know how they would reach the venue. As an officer I expected to be reimbursed. I do not recall Ms Ondieki relaying to me information about the logistics...’

He was then referred to his statement and stated;

‘...It is true that I spoke to a principal who informed me that they were happy to have received some reimbursement...’

He confirmed that there were Team Leaders through whom information could be passed to participants. He further stated as follows;

‘...I do not recall whether team leaders were also responsible for payment of transport reimbursement...’

And further;

‘...There were facilitators in the seminar. I was reimbursed some money after the seminar period.

He was then referred to his statement and stated;

‘...It is a long time. I do not understand what signature is under reference. I do not remember that part of the statement...’

Under cross examination on behalf of the 2nd accused he further stated in reference to his statement;

‘... I concur with the document but I do not recall page 3, 5th and 6th paragraphs. I do not recall saying that. I recorded the statement at the PDE’S Office...’

Lilian Rose Wambui Muchiri PW 10- the Principal Kibutha Girls Secondary School Murang’a District identified her self-written registration details at item 37 in Pros Exh 11 and purported payment details at item 34 of Pros Exh 12.

This witness also testified that she did not see the four persons named in Pros Exh 15, 16, 17 and 27 which are Facilitation Payment Schedules. According to her the only facilitators were the 1st Accused Jane Mumo, Christine Chacha who was her co-accused herein and a Mr Nyaga from the Provincial Director of Education Office.

Pros Exh 15, 16, 17 and 27 are facilitation payment schedules showing a total amount of ksh 240,000/- was paid in each to four facilitators for two sessions per day for fifteen days at ksh 2000 per session, making ksh 60,000/- per facilitator in each schedule.

From the four schedules, the following facilitators signed for the payments;

1. Anastacia Maina- ID No. 9843814- (Pros Exh 16 and 17)
2. David Songoro- ID No. 12514840 (Pros Exh 16)
3. Maryann Njoroge- ID No. 55132814 (Pros Exh 15 and 27)

4. Kamau Mugo ID No. 23407053 (Pros Exh 15 and 27)

5. Beatrice Nyamu ID No. 6346931 (Pros Exh 16 and 17)

6. Francis Ngoima- ID No. 4398612 (Pros Exh 16 and 17)

7. Jason Karanja ID No. 43698212 (Pros Exh 15 and 27)

8. Davis Njenga ID No. 44392211 (Pros Exh 15 and 27)

Bernard Wanjau Tauku (PW 26) a Fingerprints Officer based at the Ministry of Interior and Co-ordination of National Government testified that his office received a letter (Pros Exh 51) from the EACC requesting particulars of eight identity card which from observation, match those appearing in the Payment Schedules for Facilitators which I have already reproduced herein.

His office reported its findings through another letter- Pros Exh 52, which he produced on behalf of his Colleague Mr Oscar Opiyo. The findings can be summarised as follows;

1. The national identity card numbers relating to Davis Songoro and Kamau Mugo were confirmed.
2. The national identity card numbers relating to Francis Ngoima and Beatrice Nyamu did not belong to them and were issued in the names of other people.
3. The national identity card numbers relating to Jason Karanja, Davis Njenga and Maryann Njoroge did not exist in the system.
4. The national identity card number relating to Anastacia Maina was from a series that was yet to be reached in the system.

The Document Examiner Assistant Superintendent of Police Michira Ndege (PW 27) testified and produced his forensic examination Report (Pros Exh 56). He stated that he had received exhibits from Mr Stanley Miriti of KACC vide an Exhibit Memo- Pros Exh 55) with specific requests to conduct forensic examination.

The questioned documents he received were marked A1-12 (Pros Exh 53, 9, 10, 12, 19 and 21) and Specimen signatures marked B1-B68) for various individuals including the 1st Accused Jane Mumo.

He conducted his examination and rendered his opinion in his report. From the contents of his report, the Court infers that none of the individuals whose signature samples were considered in the examination appended the signatures in the questioned documents. From the evidence these include Kibethi P.G Nyamu- PW 4.

Stanley Wang' Ondu Miriti (PW 29) (Hereinafter '*the investigator*') testified that he was an Investigator with the Ethics and Anti-Corruption Commission- then known as Kenya Anti-Corruption Commission (KACC) until 2010 when he left.

In March 2010 KACC received complaints from the Ministry and he was assigned to investigate this case which concerned an allegation of misappropriation of an imprest amount of ksh. 1,675,000/- issued to the 1st Accused.

He visited and obtained documents from the Ministry and Nyeri TTI and spoke to participants. Amongst the documents he obtained were Payment Schedules Pros Exh 9, 12, 15, 16, 17, 21, 27 and 53. He established that the workshops took place.

He testified that when he confronted some of the participants with the payment schedules, they denied receiving the payments or signing for them. He further stated as follows;

‘...We were unable to find all facilitators named in the payment schedules to confirm whether they received the payments indicated against their names...’

He testified that he instead looked up their national identity numbers and sought a request from the Ministry of State for Immigration and Registration of Persons for identity information. He stated as follows in this regard making reference to Pros Exh 52;

‘...We found that some of the identity numbers shown in the schedules were issued to different persons while some could not be traced in the system...’

He subjected samples of signatures denied by participants to forensic document examination through an exhibit memo (Pros Exh 55) and obtained a report.

The investigator concluded that he had then recommended these charges against the Accused which the learned DPP approved.

Under cross-examination on behalf of the 1st Accused, the Investigator stated as follows in relation to the PS;

‘...we would ordinarily talk to the PS. I did not talk to him. He is the Accounting Officer. It was not necessary to speak to him in this case. He had delegated to specific people...’

He was referred to Paragraph 5.6.5 of the Financial Regulations on Surrender of Imprests and agreed that the Accounting Officer was to take immediate action to recover the money from the Accused’s salary on failure to surrender. He stated that it was not his mandate to find if this was done.

He was referred to the testimony of PW 18 and agreed that the witness had said he examined the documents and found them to be proper but stated that the witness had not gone to the field.

He was referred to the statement of Ekana Nyagah (PW 28) and stated that he was unaware the witness had admitted payment.

He further stated in relation to facilitators;

‘... I investigated the issue of facilitators. I am only aware of the 1st Accused. There were no others. It was not necessary to find out if there were others...’

And further admitted as follows;

‘...It was not in dispute that there were class representatives who were responsible for payment...’

In her unsworn written statement in defence, the 1st Accused acknowledged that the Workshop took place from 25/8/2009-15/9/2009. She was the Co-ordinator of the Workshop and was paid the imprest amount of ksh 1,675,000/- in cash.

The money was to cover workshop expenses relating to her per diem of ksh 70,000, Her airtime of ksh 5000/-, Her co-ordination allowance of ksh. 30,000/-, transport reimbursement for 198 participants at roughly ksh 800/- totalling ksh 160,000/-, Facilitation fee at ksh 2000/- per session, for four facilitators, each doing eight daily sessions for 15 days-totalling ksh 960,000/-, stationery at ksh 150,000/- and accommodation for resource persons at ksh 300,000/- computed at ksh 20,000/- for 15 days.

She further stated that during the workshop she dealt with 'team leaders' elected by participants adding as follows;

'...I remember dealing with the Team Leaders who I gave money to pay and settle with their respective team members and it is the team leaders who brought the transport payment schedules to me. I had faith in the team leaders and I entrusted them in good faith because the payment schedules they gave me had the identity numbers of the participants...'

She referred to the payment schedules and stated that most witnesses had owned up the national identity card numbers which implies that they gave them to their team leaders when receiving the money and must have forgotten due to time lapse between the time of the workshop and the investigation.

Further that she was not involved in signing the Payment Schedules and could not verify the signatures or ID Numbers.

She also stated as follows;

'...Apart from the team leaders all the other payments including the payment schedule for facilitators and the facilitators accommodation receipt were provided to me by Nyeri Technical. If the receipts were not genuine how was I to know...''

She further stated that one Mr Mbae, a lecturer at Nyeri TTI was the official who had been instructed by the College Principal to deal with matters of the workshop and stated as follows in relation to accommodation money for resource persons;

'...On arrival [at] Nyeri Technical I was instructed to hand over the money for accommodation of resource persons to Mr Mbae which I did. Mr Mbae did not sign anywhere that I had given him the money because I did not anticipate that issues would arise...'

According to her then, the Investigators ought to have questioned Mr Mbae and not Michael Gaitho Njungu (PW 2) because he was the wrong person, and did not have knowledge of what transpired because he admitted he had been admitted in Hospital over the period.

She stated further as follows in relation to Mr Mbae;

'There were eight facilitators in this particular workshop whose details I was given and they were the ones paid facilitation fees, and accommodation allowances by Nyeri Technical- The duly completed payment schedules were handed over to me by Mr Mbae, who was a lecturer at Nyeri Technical, the person assigned as the co-ordinator on the institution's side...'

She referred to the evidence of Mr Elkana Nyagah (PW 28) and stated that he testified to there being between 4-7 facilitators.

Further she stated that neither their payment schedules nor the contention that they did not exist were in her control because she was not involved in selecting them and could not verify their identity or the accuracy of the information they gave. Further that the Prosecution had not brought any of them to Court 'even the ones who had genuine identification numbers.'

It is her further statement that all participants were supplied with writing materials which were delivered to the venue by one Lydia Wangui (not a witness) and who she personally paid, and although she informed the Investigating Officer about her, she was not brought to testify but had been lined up as a witness.

She referred to the Receipt issued by Nyeri Enterprises and denied it was the one she submitted in her surrender, and wondered how it found its way there.

She stated that she surrendered her imprest with documents attached and her documents were accepted and she was struck off the Imprest Register because she had complied with the requirements.

In conclusion, she stated that when she was summoned by KACC in 2010 following issues which according to her were raised by them and not her employer, she was questioned on the allegation that the workshop had not taken place which was untrue because she had since been cleared and even received a promotion.

Further that there was document interference because at the meeting when she was shown documents, some were missing. Others were added and the documents were significantly different from the ones she initially submitted, and that the Investigating Officer wanted her to accept them as hers, which she refused.

She referred to white-out on the Payment Voucher at the point where the signature by the AIE is appended to show that there was interference by malicious people.

Further that her documents were screened by both internal and external auditors in 2008 and passed the test and the Investigator had failed to call the PS, who as the Accounting Officer would have been the best person to give them information.

I have carefully considered the foregoing evidence.

From it, there is no dispute that the 1st Accused, as an Assistant Director of Education, was an official at the Ministry, which was her 'Principal' in terms of Section 38 of the ACECA and for purposes of the charge she faces.

There is also no dispute that the training in question was held, and that the 1st Accused was entrusted with the custody of its funds as Imprest Holder.

The 1st Accused did in fact render an account, by surrender of her Imprest, which as she contends, was passed and she was cleared of it in the Imprest Register.

Evidence brought before the Court following investigations into the use of funds under the imprest however shows that payments purported to have been made under documents annexed to the Surrender were not in fact made, which renders the documents forged and false.

As such, participants such as PW 4 who were purported to have signed for payments of transport reimbursement are shown in the evidence of the Document Examiner not to have appended their signatures in the Participants Transport Reimbursement Schedules. All denied that they provided their national identification numbers as recorded in the schedules, while others found them to be outrightly incorrect as stated.

In her statement the 1st Accused contends that many participant witnesses owned up the national identification card numbers and hence must have given those numbers during payment and forgotten it at the time of the investigation.

However, the evidence by all the participants was that they never gave their national identification numbers and some such as PW 19 expressed surprise that their national identification number was reflected on Pros Exh 12- a payment schedule at item 13.

Moreover, all denied the associated payments and it would have not made any sense that they gave the numbers.

Importantly however, there was no unanimity in the evidence of participant witnesses that all the ID numbers reflected against their details were genuine. Some such as PW 6 and PW 8 refuted the correctness of the numbers reflected against their personal details and gave the correct ones in testimony.

It is highly unlikely that they would have given wrong identification numbers during the alleged receipt of their refuted payments.

The evidence has brought forth the question whether or not there were ‘facilitators’ at the Nyeri TTI Workshop, in addition to the question of their actual payment and their precise number. For purposes of this judgment, I will apply the term equally to ‘resource persons’,

Although the Investigator asserted that there was only the 1st Accused and Ms Christine Chacha as ‘facilitators’, he was unconvincing under cross-examination as to the effort he made to inquire into the issue.

It only appears that all he did was to request for information on the identity card numbers contained in the Facilitators Payment Schedules (Pros Exh 15, 16, 17 and 27).

When he received the information, it showed that save for two, the rest of the national ID numbers reflected in the Facilitators Payment schedules were not genuine.

The 1st Accused was right to point out in her statement that the investigator had failed to trace and avail as witnesses, any of the facilitators even those whose ID numbers were indicated to him as genuine.

The fact that this evidence shows that at least two national identity card numbers which did not belong to the persons charged herein were genuine, flies in the face of the Investigator’s contention that no other facilitators existed besides the 1st Accused and Ms Christine Chacha (formerly 2nd Accused)

It is also true as the 1st Accused stated in her statement that Elkana Nyagah (PW 28) who played an important role in preparing for the Workshop testified that there were other facilitators.

Under Cross-examination, Simon Lucas Mburu (PW 20) stated that it was not true to say that the Accused were the only facilitators.

The clearest indication yet that this was the case is in the workshop programme attached to the surrender voucher which shows that it had presentations and 'resource persons' in addition to 'MOE' (Read 'Ministry of Education') officials, the latter of which the 1st Accused and Ms Chacha were.

Budget documents annexed to Pros Exh 3 especially one titled '*Budget for phase 1*' which has a column specifically relating to the 1st accused as co-ordinator, further confirm the point as ksh. 300,000/- is allocated for that purpose.

From the foregoing therefore there was no sound basis for the investigator to say that the workshop had only two facilitators and I so find.

The 1st Accused asserted that eight facilitators were paid a total of ksh 960,000/-. But of these eight, the identification data of only two was authenticated in their payment schedules, which means that if indeed they were eight, the identification data in relation to six is false.

The fact that the investigator did a poor job of ascertaining whether other facilitators besides the 1st Accused and Ms Christine Chacha existed, and the finding that of the eight the 1st Accused asserts in her evidence, only two had authentic identification data recorded, leaves the Court in a quandary in as far as determining exactly how much of the imprest was expended on facilitation, is concerned.

This determination is important because there are three receipts showing that they are issued by Nyeri Mordern Hotel on account of accommodation for the combined sum of ksh 300,000/- and which the 1st Accused asserts was paid on account of accommodation of 'resource persons', only that she did not do it personally, but that it was done by one Mr Mbae (not a witness) of Nyeri TTI.

She has contended that it is the said Mr Mbae who the Investigator should have questioned in place of PW 2, who had no knowledge of what happened.

Indeed her statement in this regard is vindicated in the testimony of PW 2 who conceded that he was admitted in hospital during the period of the workshop. Being a sick person in hospital, it is doubtful that PW 2 was at the same time able to follow and be well-versed with the events at the workshop as he purported in testimony.

Relating to the three receipts by Nyeri Mordern Hotel, the Investigator has not called any evidence to show that they were not issued as they purport, probably because of his faulty conclusion that no facilitators, which term I have also applied to 'resource persons' and vice versa, existed, besides the 1st accused and Christine Chacha. The only evidence relating to them was from PW 2 who could only testify that Nyeri Mordern Hotel was not one of hotels sub-contracted by Nyeri TTI where participants were accommodated.

I have emphasized the word 'participants' because PW 2 was clear in his testimony that Nyeri TTI only dealt with participant's accommodation.

The assertion of how much he knew has however been thrown into doubt by his own admission that he was admitted in hospital at the time. This fact alone also casts doubt on his suitability as a witness to the events at Nyeri TTI during the workshop and lends credence to the statement by the 1st Accused that the Investigator could have done better in this regard.

In relation to the expenditure on stationery, although there is exhibited a Receipt relating to stationery showing it is issued by Nyeri Enterprises, no evidence is called to show that it was not issued as such.

The receipt is for the sum of ksh 147,436/- which closely mirrors the amount of 147,756/- contained on account of stationery in the earlier referred to expenditure summary annexed to Pros Exh 3- the Surrender Voucher.

In her statement however, the 1st Accused while stating that she purchased and paid for stationery for the workshop from one Lydia Wangui (not a witness) denied that it was the receipt she submitted in her surrender, while alleging generally that there was interference with her surrendered documents. She placed specific reliance in this regard to white-out appearing on Pros Exh 3.

The 1st Accused did not provide any specific evidence of who interfered with the surrendered documents and further, did not confront the Investigator or any of the ministry witnesses with this specific allegation. She did not ask for the witness statement of one Lydia Wangui, whom she alleged had been lined up as witness, nor did she confront the Investigator with any material relating to her. She has also not called her as a witness.

Moreover, as relates to the white-out on Pros Exh 3 where the signature of The AIE Holder was appended, PW 18 confirmed in his evidence that the document was that way before he did his examination, by which point the investigations in this matter had not even started.

I therefore do not think that much can be made of the 'white out' on the document although, I agree with the 1st Accused that as an accountable document, it should ideally contain no alterations.

Notwithstanding the 1st Accused's rejection of the Nyeri Enterprises Receipt, I have found no evidence showing that the amount relating to stationery was at least as appears in the expenditure summary, not expended as such at the Workshop.

In the testimony of PW 2, there was no indication that Nyeri TTI was to cover the item of stationery and because the workshop was held, money must have been spent on this item. In the circumstances proved, it would defy logic to conclude otherwise.

As already seen, payment schedules relating to transport reimbursement and Payment of Facilitators contained false information, and as such were forgeries and appear to me to be the only questionable aspects in relation to the account rendered by the 1st Accused in relation to her imprest.

These Schedules are proved to have been part of the documents annexed to Pros Exh 3- the Surrender Voucher that was examined by PW 18 and whose surrender is acknowledged by the 1st Accused.

Besides alleging interference with the documents which contention I found has no merit, the 1st Accused also stated that she received the completed schedules from team leaders and one Mr Mbae of Nyeri TTI who is not called as a witness.

She states that she had no way of verifying the information in the documents because it was out of her control and because she had faith in team and 'entrusted' them. While she alleges that she was 'instructed' on arrival to give the money for accommodation of resource persons to Mr Mbae, she acknowledges that he did not sign anywhere because she did not anticipate issues would arise.

There are a number of problems with the foregoing assertions by the 1st accused. First, Facilitation Payment Schedules (Pros Exh 15, 26, 17 and 27) show the name of the paying officer as '*Jane Mumo*' and a designation 'ADE' which must be 'Assistant Director of Education' in full, which she was.

Although she stated that she was not involved in writing or signing them, or even paying, she has not explained why her name appears as the paying officer.

Secondly, the 1st Accused does not say who instructed her to hand over accommodation money for resource persons/facilitators, to Mr Mbae as she alleges, or even how much she handed over.

It is also curious and unusual that she would have casually handed over the money to Mr Mbae without requiring any form of accountability from him.

It is further curious that she has not called or demonstrated any attempt to call the said Mr Mbae to buttress her claim in relation to him, even as she accused the prosecution of failing to avail him.

Finally she has equally not given any detail of the amounts she gave to team leaders to pay participants as she alleges, and evidence of how they accounted for the moneys received. It is woefully insufficient in my view, for her to merely say that she trusted them.

It was her ultimate responsibility as Imprest Holder to surrender and account for her Imprest and to put mechanisms in place that ensured those who assisted her accounted fully to her.

Finally the 1st Accused also stated citing the testimony of PW 18 that her surrender was cleared and that the documents also passed external and internal audits in 2008.

All that can be said about this contention is that the Investigation conducted by KACC did not seek to accomplish the same objectives as the process of voucher examination undertaken by PW 18 or that of the internal and external audit processes.

It is therefore no defence to the charges against her before this Court, that the same issues were considered favourably within the mandates of those other entities or persons.

Moreover, in his role as Payment Voucher Examiner, PW 18 was not undertaking a forensic exercise in relation to the Surrender Voucher submitted by the 1st accused, but as he explained, his was a mere arithmetic exercise to ascertain that the amount of the Imprest and that in the documents supporting expenditure tallied.

While it would have fallen upon the Prosecution to avail any audit reports relating to the Imprest taken by the 1st Accused, where it has demonstrated its case by other evidence it behoved the 1st Accused to avail evidence of any such audits in support of her defence. She has not done that.

In the end, I find that the Prosecution has proved that the Surrender Voucher (Pros Exh 3) submitted by the 1st Accused to the Ministry- which is her employer and principal contained false and forged payment schedules purporting to support payments to participants for transport reimbursement and payment to facilitators for facilitation fees, and amounted to a deception upon her said principal.

I further find that because Pros Exh 15, 16, 17 and 27 show on their face that the payments were made by the 1st Accused, and contain false identification data, then the 1st Accused cannot deny knowledge of the deception alleged against her, and has not succeeded in passing blame thereof to others who she alleges worked with her.

As such, the charge against her in Count 1 is therefore proved beyond all reasonable doubt.

I **CONVICT** the 1st Accused of it under section 215 CPC.

Right of Appeal 14 days- explained.

FELIX KOMBO

SENIOR PRINCIPAL MAGISTRATE

DELIVERED IN OPEN COURT THIS 30TH DAY OF SEPTEMBER 2020



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