

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CRIMINAL DIVISION

CRIMINAL CASE NO. 18 OF 2018

THE REPUBLIC

VS

REVEREND DANIEL MHONE

MLENGA MVULA

CORAM: THE HON. JUSTICE MR S.A. KALEMBERA

Mr Chiwala, of Counsel for the State

Mr Phiri, of Co-Counsel for the State

Mr Harawa, of Co-Counsel for the State

Mr Dondwe, of Counsel for the Accused

Mrs Chawinga, Court Clerk

Mrs Msimuko, Court Reporter

JUDGMENT

Kalembera J

The accused persons, Reverend Daniel Mhone and Mlenga Mvula are answering multiple charges under the Corrupt Practices Act and the Penal Code as follows;

Count one

Obtaining money by false pretences, contrary to section 319 of the Penal Code.

Particulars of the offence

Reverend Daniel Mhone and Mlenga Mvula in or around the month of June 2016 in the city of Blantyre by false pretences and with intent to defraud obtained the sum of MK2, 800,000 from Methodist Church by falsely representing that the said money was to be given to the then Attorney General, Mr. Kalekeni Kaphale in order to influence him to act in favour of the Methodist Church in a case between the State, the Attorney General and the Registered Trustees of United Methodist Church.

Count two

Obtaining money by false pretences, contrary to Section 319 of the Penal Code.

Particulars of the offence

Reverend Daniel Mhone and Mlenga Mvula in or around the month of June 2016 in the city of Blantyre by false pretences and with intent to defraud obtained the sum of MK2, 250, 000 from Methodist Church by falsely representing the said money was to be given to justices Fiona Mwale and Charless Mkandawire of the High Court of Malawi in order for the said justices to decide in favour of the Methodist Church in a case between the State, the Attorney General and the Registered Trustees of United Methodist Church.

Count three Obtaining money false pretences, contrary to section 319 of Penal Code.

Particulars of the offence

Reverend Daniel Mhone and Mlenga Mvula in or around the month of June 2016 in the city of Blantyre by false pretences and with intent to defraud obtained the sum of MK150, 000 from Methodist Church by falsely representing that the said money was meant to be paid as legal costs for having a case between the State, the Attorney General and the Registered Trustees of United Methodist Church adjourned.

Count four

Misuse of public office contrary to section 25B (1) of the corrupt Practices Act.

Particulars of the offence

Mlenga Mvula on or about 10th May in the City of Lilongwe being a person employed as Judiciary Spokesperson misused his public office for his own advantage by corruptly obtaining the sum of MK3,250,000 from Methodist Church for his studies at Chancellor College, on account that he was influencing Justices Fiona Mwale and Charles Mkandawire of the High Court of Malawi in order for the said justices to decide in favour of the Methodist Church in a case between the state, the Attorney General and the Registered Trustees of United Methodist Church.

Count five

Forgery contrary to section 356 of the penal code.

Particulars of the offence

Reverend Daniel Mhone and Mlenga Mvula on 29th June 2016 in the city of Blantyre by false pretences and with intent to defraud or deceive, forged a Third-Party Money Deposit Receipt in the sum of Two million Two Hundred fifty thousand Kwacha by purporting that the said Receipt was issued by the Judiciary Department.

Count Six

Uttering a false document contrary to section 360 of the Penal Code

Particulars of the offence

Reverend Daniel Mhone and Mlenga Mvula on 29th June 2016 in the city of Blantyre by false pretences and with intent to defraud or deceive, forged a Third-Party Money Deposit Receipt in the sum of Two million Two Hundred fifty thousand Kwacha by purporting that the said Receipt was issued by the Judiciary Department.

Count seven

Forgery contrary to section 356 of the Penal Code.

Particulars of the offence

Reverend Daniel Mhone and Mlenga Mvula on 31st January, 2017 in the city of Blantyre knowingly and fraudulently uttered to Lindiwe Tilika a false document (namely a Third Party Deposit Receipt) by purporting that the said Receipt was issued by the Judiciary Department.

Count eight

Uttering a false document contrary to section 360 of the Penal Code.

Particulars of the offence

Reverend Daniel Mhone and Mlenga Mvula on 31st January, 2017 in the city of Blantyre knowingly and fraudulently uttered to Lindiwe Tilika a false document (namely a third-Party Money Deposit Receipt) by purporting that the said Receipt was issued by the Judiciary Department.

The accused persons pleaded **NOT GUILTY** to all the charges arraigned against them. It therefore became incumbent on the State to parade witnesses in order to prove their case against the accused persons. The State paraded 18 witnesses.

PW1 was Reverend Maxwell Jawati. It was his testimony that he is the founding member of the Malawi Methodist Church and one of the Registered Trustees of the Church. He told the court that there have been misunderstandings in the church which led to court cases amongst and between the church leadership. He told the court that when the 1st accused person was appointed as conference superintended, he ignored the registered board of trustees, he grabbed every duty and responsibilities of assigning to the board of trustees.

This led to a great suspicion of financial misconduct or mismanagement as a result the board of the Registered Trustees of the United Methodist Church, which he chairs, obtained a writ to possess the church property at Nacholi under Civil Cause Number 346/2013 which was heard before Justice Ivy Kamanga. On 6th June, 2017 sheriffs from the High Court closed the Nacholi premises where the first accused person and the other church team were operating from. The Sheriffs handed the office keys to Rev Mbewe and other four members.

The registered Trustees had an emergency meeting on 14/06/2017 where they directed Reverend Mbewe and his team to go to Nacholi to open the 1st accused person's office. When they opened the office, the Registered Trustees discovered among other things a file labelled "**Highly Confidential**". When the file was opened, they found several documents among them were cabinet resolutions which contained names of senior Government officials namely then honourable Attorney General, High Court Judges Fiona Mwale and Mkandawire (Both of Lilongwe Registry) who according to the documents had demanded money to decide the cases involving the church in favour of the first accused's camp. In this file it was stated

that the Attorney General had asked for MK 6,800,000.00 for him to help them to remove the Registered Trustees.

Furthermore, it was also stated in this file that Honourable Justice Fiona Mwale and Honourable Justice Charles Mkandawire demanded MK 2,250,000 for them to preside over the case and help them to eradicate members of the board of trustees. There was also in the same file requisition vouchers and cheque images, confirming that payments were made to the named senior public officers. There was also documentation which stated that the 2nd accused person, Mlenga Mvula as a person who played a part to connect the first accused's camp with the judges.

Reverend Jawati stated that they then took the documents to their lawyer who advised them report to either the Fiscal Police or the Anti- Corruption Bureau. When they reported the case to the Anti-Corruption Bureau, they were informed that the Judges in Lilongwe had also asked ACB to investigate this case and help clear their names whether they received the money or not. On 1st September, 2017 the accused persons were arrested.

PW2 was Reverend Steven Mbewe. It was his testimony that he is a Reverend in the Malawi United Methodist Church. He is the person who discovered the 'Highly Confidential' file from the office of Reverend Daniel Mhone (second accused person) at Nancholi Church premises.

He informed the court that in 2017, the General Conference elected him a team leader of a team which was tasked to go to Blantyre. The team's mandate was to take over all properties from the hands of the first accused. In Blantyre they engaged the police to witness the takeover. He and other team members went to Nancholi on 18/05/2017.

While there they asked the first accused to take his property out before they started to close the offices. In the process of closing the offices, the second accused came, introduced himself a lawyer from the High Court. The second accused eventually stopped them what they were doing, took them in his vehicle up to Development House in town. They went back to Lilongwe.

PW2 said they had to come back to Nacholi the second time around 24/05/17 with the police officers just as before. They found the first accused, the police showed him the court documents they had.

In one of the cabinets, they found a file labeled 'Highly Confidential ' which they took to the Board of Trustees which had sent them.

PW2 identified the documents which they found in the 'Highly Confidential' file. The included cheque images, receipts, vouchers, invoices and others.

PW3 was Lindiwe Tilika. It was her testimony that she is the Treasurer of the United Methodist Church, a signatory to the church's account in issue, and the person who compiled and filed most of the documentation relating to the money in issue. She told the court that she has worked with the United Methodist church since 2013. She started as a Farm Accounts Clerk and rose through the ranks to the position of Acting Treasurer and that she was reporting to the first accused. She said some of her duties at the United Methodist Church included posting accounts transactions, writing cheques, preparing financial reports, payroll, receiving expense reports.

She generally testified that due to court cases in which the church was involved, its partners advised it open an account in the name of a missionary called Karen Ujereh who was also at the material time its treasurer. The signatories to this account were Karen Ujereh, the first accused, herself (PW3) and Chikondi Samson (PW4). She stated that the money in that account remained church money.

PW3's evidence was that the documents on pages 101 and 102 "Highly Confidential Matters" (EXP9A) and "pages 113 and 114 "DEVELOPMENTS OVER THE COURT CASE" were brought to her by the first accused to prepare some payments.

In relation to the first count, she stated that (EXP13A) (page 95) was prepared by the first accused person on 22nd July 2016 and brought to her for review and processing payment. She then acting on it prepared a cheque (EXP13C) in the name of the second accused who collected and cashed it. Then the first accused prepared EXP 13B (page 94). She said herself and the first accused signed the cheque.

In relation to the second count, she said that the first accused requested for MK2, 250, 000 on 23rd

August 2016 through EXP12A (page 1 1 1) She reviewed it and prepared a cheque EXP12D (page

115) in the name of the second accused which was collected and cashed by the second accused. The first accused then prepared an Expense report EXP 12 (page 112) and then the second accused brought a Receipt EXP 9C (page 1 10). She identified her signature and that of first accused on the cheque.

In relation to the third count, she said that the first accused requested for MK150, 000 on 29th August 2016 through EXP11A (page 141) She reviewed it and prepared a cheque EXP IID (page 145) in the name of the second accused who collected and cashed it. The first accused then prepared an Expense report EXP IIC (page 143) and then the second accused brought a Receipt EXP 11B (page 142).

She said herself and the first accused signed the cheque.

In relation to the fourth count, she stated that the second accused brought an invoice MK/YM (EXP 15B) (page 124) purported to be from Chancellor College After the

first accused had brought (EXP15A). On 10th May 2017 the second accused wrote her an email (EXP 15C) on page 123. She then on the strength of these documents prepared a cheque on page 128 (EXP 151)). The cheque was signed by herself and the first accused.

In relation to the fifth and sixth counts her evidence was that after the second accused collected (EXP12D) above he brought a Receipt (EXP 9C) and the first accused prepared a related expense report as above.

In relation to the seventh and eighth counts, she said that the first accused brought what is purported to be a cabinet resolution (page 101-102) before requesting for MK4, 000, 000 on 31st January, 2017 through (EXP9A) (page 106) and Funds Requisition Voucher (EXP 9C) which she reviewed and then prepared a cheque EXP9 F (page 145) in the name of the second accused which was collected and cashed by the second accused himself. The first accused then prepared an Expense report EXP9D (page 104) and then the second accused brought a Receipt EXP9E (page 107)

PW3 also informed the court that the first accused on 9th July 2017 wrote her an email on page 167 advising her to reverse in the system 2 High Court receipts of 4 million and 2.2 million to relief instead of legal and all other receipts to remain legal. The email also asked her to keep her laptop away. The same email was copied to PW4 with advice to keep her laptop away from the house until crossing over.

PW4 was Chikondi Samson. It was here testimony that she was at the material time the church Administrator and a signatory to the church's account. She filed some of the documentation of the documents in issue.

She told the court that at the material time she used to work as an office manager at the United Methodist Church in Nancholi. Her evidence generally corroborated that of PW3. She testified that as office manager her duties basically included doing secretarial duties for the first accused and also covering human resource duties. She identified most of the documents that PW3 tendered to have been brought to her by the first accused for filing. She also identified the first accused's and PW3 's signatures on the material documents. **She also identified the email from the first accused instructing her to keep her laptop away.**

PW5 was Angellina Phiri. It was her testimony that she is one of the cashiers at the High Court's Cash Office tasked to receive fees and issue Third Party Money Deposit Receipts. She works in the Revenue section of the Judiciary at the High Court Principal Registry as an Accounts Assistant.

She told the court that her duties include receiving filing fees for different court documents. She informed the court that they have a Fees Schedule chart at which they look when receiving fees. She tendered in evidence a chart which was in use in 2016- 2017 (EXP 14) which shows the highest fees as K5000 and the lowest being K1 000. It was her evidence that a Third-Party Money Deposit Receipt is issued after one has paid any fees. She said she was one of the two officers who were working in the Revenue office.

When referred to the receipts on page 107 — EX P6E, page 146 — EXP 7C, page 110, page 118- EXP 5C, page 150- EXP 4B and page 152, her testimony was that none of them was issued from the Revenue. She went on to say that the amounts on these receipts were way beyond what was chargeable at the material time and that the narrations were not captured like they do. She denied issuing the receipts herself and that she didn't even know who issued them.

In cross examination she repeated to say she does not know who signed the receipts. **That the second accused person never came to their office to demand receipts.**

PW6 was Hugo Ngwira. It was his testimony that he is the Project coordinator at the United Methodist church and also a finance chairperson for Penga circuit where he manages funds for the church. **He told the court that he did not receive money in 2016 and that he does not have any idea about the relief money amounting to K4 Million and K2 Million. On being cross examined by the defence among others he told the court that he reports to the first accused. That at some point there was some misuse of funds and partners decided to open an account in the name of Kalen Ujere.**

PW7 was Peter Nakoma. It was his testimony that he is the College Finance Officer at Chancellor College. Important to this case Mr. Nakoma said that in the period 2016 to 2017 the College used to issue invoices manually from a carbonated book.

Commenting on the invoice (EXP 15) on page 124 of the prosecution bundle he said although the invoice looked like having some features from Chancellor College it has some details which are not from Chancellor College such as words 'University of Malawi' on top of the emblem and the address appearing on the sides of the emblem instead of appearing under the emblem in addition to not being manually produced.

On the amount of K2,000,000.00 indicated as tuition fees on the purported invoice, the witness said the applicable fees then was only K950, 000.00. He also said the College does not demand fees for Research supervision, Medical and Library fees as indicated on the invoice. He added that the account number indicated on the invoice was also erroneous. He also doubted the signature of Mr. C. Soko the purported author of the invoice.

Mr. Nakoma tendered in evidence the questioned invoice as well as a blank invoice sample (EXP 16) from Chancellor College, Cash Deposit Slip (EXP17) and its receipt (EXP18) for the real fees paid by the second accused for the court's appreciation.

PW8 was Clement Edington Soko. It was his testimony that he is the Faculty of Law's Accountant at Chancellor College since 2015. He told the Court that the applicable fees for undergraduate programmes at the material time were K350, 000.00 and K950, 000.00 for generic students and mature students respectively.

He said invoices are issued to students upon request by a particular student. He denied originating Ex P15. His evidence regarding the features of the invoices was like that of Mr. Nakoma.

PW9 was Justice Agness Thokozani Patemba. It was her testimony that she was the Registrar of the High Court of Malawi at the material time. She identified the second accused as a former Press Officer/Spokesperson for the Judiciary whose duty was to provide information to the public or speaking to the public. She said the Commenting on Ex P6E (page 107) she stated that apart from the fact that the Judiciary does not receive any money on cancellation of Judicial Review the K4, 000, 000.00 is way too much as indicated in Ex P14.

On Ex P 9C she said that the Judiciary does not get processing fees and even in dismissing summons they don't charge such amounts of money. She also told the court that the court does not receive any money on behalf of the Attorney General as the Attorney General is independent from the Judiciary. It was her further evidence that the Judiciary does also not charge any money when transferring a matter from one judge to another.

In cross examination she clarified that in terms of cancellation of judicial review, money is only payable if a specific document is being filed.

PW10 was Justice Fiona Atupele Mwale. It was her testimony that she is a Judge of the High Court of Malawi, based at the Lilongwe Registry. She identified the second accused as Mlenga Mvula who used to be Judicial spokesperson. Among others she told the Court that she had interacted with him over issues regarding cash gate cases and the media misrepresentation over it. She stated that on another occasion the second accused had asked for her photograph for the annual report which she emailed to him but later also sent to him over WhatsApp. She stated that she knew the case involving members of Methodist church and the Attorney General as it had come before her on preliminary application.

One day she got a call from the second accused asking for the progress of the case because it had been adjourned for a number of times. She went on to say the second accused told her that he was getting pressure from the press. She later advised him that the matter was before her and had been set down for hearing. It was also her evidence that the second accused also asked for progress of the case when they met at Parliament. This time she asked him to check with the Registrar who was Violet Chipao.

She further stated that she later met the Registrar and explained to her that her and her office should be dealing with Mr. Mlenga Mvula on the case.

She further informed the court that later she got documents from her colleague who said that there were some allegations that she together with Justice Mkandawire had demanded K2,250,000 from Mr. Mlenga Mvula in order to decide the case in favour of the church. She was shocked and later wrote a memo to the Registrar on the issues about the allegations made against her proposing that the issue be handled by ACB.

She then phoned Justice Mkandawire who was outside the country to let him know about the allegations made about him. She categorically denied demanding and receiving any money from the church.

PW11 was Justice Mankhambira Charles Mkandawire. It was his testimony that he is a Judge of the High Court of Malawi based at the Lilongwe District Registry. He recognised the second accused as Mlenga Mvula who he had officially known Public Relations Officer for Judiciary. He said in July 2015 he dealt with him face to face but have never spoken to him not even in simple communication after the July 2015. On Civil cause number 346/2013 he told the court that in July 2017 as the judge on duty the case came to his chambers for an application for a stay of eviction. It was an ex-parte application which he granted after reading the affidavit. PW11 identified Ex DD2 as an order that he granted in cause number 346/13 for stay of eviction in July 2017. He informed the court that he did not demand money in order to issue the order.

On Civil cause number 490/2013. It was his evidence that the case was in his chambers with summons of hearing of Judicial Review. By that time, he was on leave, so the parties later applied for an adjournment. He continued that in mid July 2017 while in the Netherlands he received Whatsapp message from Justice Mwale, who said there was an allegation that he, the Attorney General and herself had been demanding money from the United Methodist Church through the second accused, Mlenga Mvula.

He said he was accused of demanding K2 million. Later he went to ACB to complain as this was false. He stated that he had only dealt with Mlenga Mvula officially once hence he was surprised. He denied demanding or receiving the money. He told the court that he has never demanded any money during his entire

career. Commenting on court fees, he informed the Court that the most expensive fees for filing is around K5, 000.

PW12 was Felix Thomas Makwinja. It was his testimony that he works as Senior Accounts Assistant at Principal Registry of the Malawi High Court. He is one of the persons responsible for receiving revenue and issuing third party receipts. The other person he said is Angelina Phiri. He said a third-party receipt is issued once a payment is made. They issue two copies of third-party receipt. There is an original and duplicate. The original is white and the duplicate is green. The original is given to the client. According to Makwinja the smallest amount one pays as filing fees is K 1000 and the highest is K5,000 as indicated on page 262 marked Ex P 14.

Makwinja identified the second accused as Mlenga Mvula whom he knew because he was his boss at the High Court. He said the second accused never came to his office to pay any fees. When referred to (Page 107) Ex P 6E, his comment was that he does not know who issued it, did not recognise the signature therein and that MK4 million was too much for Judicial Review and has never issued a receipt for cancellation of Judicial Review.

The witness made similar observations and comments in relation to pagel 10: Ex P 9C, page 118: Ex P 5C, page 142 –Ex P 7C, page 150 Ex P 3B, page 152 Ex P 4B, page 156: Ex P 21, page 160: Ex P 21).

In cross examination, Makwinja among others, stated that he had worked with the Judiciary for 29 years. That the second accused never came to his office to ask for receipts, and they do not allow any person to access third party money receipt book at their work place.

PW13 was Pastor Ephraim Kambona. It was his testimony that he is the District Superintendent for Malawi South in the United Methodist Church. His testimonoy was

that he was a member in the church's cabinet comprised of ordained pastors and that he also represents the church in high profile meetings. He told the court the other members of the cabinet are Reverend Mhone (the first accused) who is also the Conference Superintendent, Reverend Collins Kaunda, Reverend Copeland Nkhata who is the Registrar / Secretary. Pastor Kambona stated that the mandate of the cabinet is central to the church as it makes decisions for the church.

When referred Ex P 9A (page 101 and 102 IDP A) he could not recognize the document. He told the court that while the document is dated 27/01/2017, the last cabinet meeting that he attended was held on 22/01/2017. He described second paragraph on K4 million as news to him.

Upon being cross examined by the defence he said, among many others, that the church has a Health Board which deals with health issues and also run a clinic that treats people with HIV/ AIDS etc.

He stated that the last annual conference was in 2016 but they did not have any resolutions on the issue to do with wrangles (Cases). He said he saw the purported resolutions when he was called at

ACB.

PW14 was Elson Kalekeni Kaphale. It was his testimony that he was the Attorney General of the Government of Malawi between 2014 — 2017. He said as Attorney General his duties were providing legal advice to the government, taking on the interest of Malawi on matters relating to trusts. Taking legal action when the trust is being abused by anybody.

He recalled that the second accused worked at Judiciary and that the first accused must have been linked to the United Methodist Church. He also recalled that there was a matter that was in the courts which he found when he became Attorney

General in 2014. It related to a matter where Attorney General commenced action in his capacity questioning terms of office of Reverend Jawati. He told the court that there were two camps. One led by the first accused and the other one by Rev. Jawati. The matter was allocated to counsel Itimu to handle.

When he was referred to Ex P 9A (page 102) his comment was that he was the Attorney General that time and the allegations therein are completely false because, it is factually incorrect as the Attorney General's office does not demand money to carry out its functions, his office having reviewed the matter, suggested arbitration and could not be proposing reviving the case and later demanding K4 million.

PW13's comment on Ex P 9E (Page 107) was that while this document purported to be a receipt from judiciary on money from United Methodist Church for cancellation of judicial review, strangely it was a Blantyre receipt whereas the case was at the Lilongwe High Court. He also observed that there are no fees that have reached K4 million. He called the receipt a complete nonsense. He also observed that there would have been no need for money meant for Attorney General to pass through judiciary. When money lands in the Judiciary there must be a notice of payment out of the court to serve to the office of the Registrar in order to be paid out of the court to reach the intended payee.

PW15 was Reverend Collins Kaunda. It was his testimony that he is the District Superintendent for the North Central District for United Methodist Church and also a member of the Cabinet Committee since 2016. He told the Court that the membership comprises of Reverends Mhone, Kambona, Nkhata and himself. The roles of the committee, he said, is to administer the church's daily issues. He informed the court that the quorum of the cabinet is four (all of them have to be present).

He, respectively, identified the first and second accused as Reverend Mhone Conference Superintendent and Mlenga Mvula member of the church.

Upon being referred to Ex P 9A (Page 101 -102), his comments were that the Cabinet Resolutions were authored by Reverend Daniel Mhone. He stated that though the document was copied to him, he had no knowledge of this document and got no copy of the document. On being cross examined by the defence he told the court that he had forgotten the last date of the cabinet meeting. He stated that he is not a member of the Board of Trustees. He concluded by saying that he first saw the document on "cabinet resolutions" when the ACB people came for investigations. Asked to comment on the second and third paragraphs he said that the meeting did not take place.

PW16 was Reverend Copeland Nkhata. It was his testimony that he is a Pastor working with United Methodist Church. He informed the court that he became a pastor in 1992 and became a member of the cabinet in October 2016. In January 2017, he was elected secretary of the cabinet of the church. He said he is also a chair of the Health Board. He stated that he also served in the Board of Ordained Ministries.

It was his evidence that as secretary to cabinet he takes minutes of the cabinet and also keep records of the cabinet. Other members of the cabinet are Reverends Mhone, Kambona and Kaunda. The quorum is that all four should be present. The mandate of the cabinet is to decide on the administrative issues.

His comment on Ex P 9A (Page 101 -102) was that it was signed by the first accused but he neither knew it nor did he receive a copy of it. He said as cabinet they have never discussed the issues in paragraphs 2 and 3. **He continued to say however, Reverend Mhone told him through a call that the Attorney General Kalekeni**

Kaphale was asking for K4 million to help the church in the court case. He was later told by the first accused that he had paid the K4 million.

Then he said later Mrs. Mhone told him that the K4 million was a concern for the ACB and that ACB would ask him about this money. After sometime the first accused called him and told him the same about the K4 million the second accused told him that he should exercise his right of silence if ACB asked him about the K4 million.

In cross examination PW 15 stated that he has never served in the Board of trustees. That he was called by the first accused soon after their arrest. This is the arrest of Reverend Mhone and Mlenga Mvula. It was a normal phone call. Apart from his word of mouth he has no other evidence to substantiate this since he had changed handsets.

PWI 7 was Flattery Nkhata. It was his testimony that he is Senior Investigations Officer working with the Anti-Corruption Bureau (ACB). He stated that he knew both accused persons after ACB received complaint of corruption against them and some government officials which included the Attorney General and two High Court judges. When ACB Director General authorized investigations of the complaint, he led the team that was investigating the complaint. As part of investigations the team interviewed several people from United Methodist Church and the Judiciary and obtained several documents which they analyzed in addition to searching some premises. Some documents were also sent to Malawi Police Service for handwriting analysis. **It was his evidence that during investigations they discovered a file labelled 'Highly Confidential' which contained documents such as Communication from the first accused that alleged that the Attorney and two High Court judges demanded money from the church, cheque images, Requisition vouchers, Expense Reports, High Court Third Party Money**

Receipts, Cabinets Resolutions, Scholarship request for the second accused, Invoices and Receipts from Chancellor College and others.

Apart from the above documents, Mr. Nkhata informed the court that they also obtained certified documents such as account opening documents and cheque images for United Methodist church from National Bank and Ecobank. The last set of documents, he said, was obtained from Chancellor College.

Nkhata further told the court that the interviews and analysis of documents that his team carried out established the following:

- a. That Reverend Daniel Mhone and Mlenga Mvula obtained money from United Methodist Church on the pretense that the money would be given to Attorney General and High court judges as a bribe.
- b. That Third Party Receipts from the Judiciary, an invoice and a receipt from Chancellor College were forged.
- c. That the second accused secured scholarship from the church on the basis that he was helping the church win its cases.

On being cross examined by counsel for the defence he said the issue of leadership structure came into light during investigations but it was immaterial to what they were investigating. He said they learnt that the church is run by Registered Board of Trustees in passing.

In re-examination he said some documents were taken to Malawi Police Service for handwriting expertise together with samples from the second accused for comparison. The finding of the Police is that the documents were authored by Mr. Mlenga Mvula

PW18 was Assistant Superintendent Justice Patrick Benard Nkhoma. It was his testimony that he is a Forensic Document Examiner and heading the Forensic Document Examination unit under Malawi Police Service (MPS). He is also second in charge in the Fingerprint Section. Mr. Nkhoma joined MPS in 1985 and has been working in the forensic document examination unit since 1992. He told the court that he has certificates from America and Botswana in the forensic document examination.

He stated that when documents are submitted to the unit questioning signatures, handwriting or date stamp and samples they do conduct an analysis using samples submitted following forensic document examination procedure ACEV.

He further informed the court that on 18 February 2020, Mr. F Nkhata of ACB submitted 9 questioned Third Party Deposit Acknowledgement receipts for signature verification and handwriting identification of the second accused. The other documents were Mr. Mlenga's specimen of his handwriting and signature.

He said he was the examiner and a Senior Assistant Commissioner verified the work. Additionally, three other officers namely Detective Inspector Kanyong'o, Detective Inspector Ndomondo and Sub Inspector Kananji also verified the work and concurred with his findings.

It was his further evidence that after analyzing the documents he verified that the signatures on the 9 documents stated in the file were different from that of the second accused but the handwriting was his (that is Mr. Mlenga Mvula) authored the 9 documents. He stated the documents were scanned at 600 dots / inch using HP Span Jet No. 5590P and adobe Photoshop 6.0 software.

In cross examination he stated that he was trained by an expert trainer for more than 6 months, therefore he was an expert Forensic document examiner but not a

graphologist who can interpret somebody's behavior through writing. There is no possibility that the handwriting could belong to someone else and not Mlenga Mvula.

When re-examined by the state he said at times people disguise their signature but handwriting is just too much and nobody can disguise (including the accused person). Every person has his own handwriting as such no one can have the same.

After this witness the State closed its case. The court found each accused person with a case to answer. They both opted to testify in their defence and call further witnesses.

DW 1 was Reverend Daniel Mhone. It was his testimony that at the Malawi Methodist Church his position is Conference Superintendent, and that he was appointed by Bishop Eben Nhiwatiwa of Zimbabwe around 2007 succeeding Reverend Maxwell Jawati whose term of tenure had expired in 2006. He went round explaining the history of the church in Malawi, its procedures and protocols before delving into the matter before the court.

He informed the Court that the accounts of the Malawi Methodist Church have remained as account number 345067 at National Bank of Malawi. That the personal account of Karen Ujereh was used to receive designated funds from partners and church agencies and that no money was obtained by false pretences from that account. He further informed the court that no payments were made to the Attorney General and judges from this personal account either. He told the court that contrary to the allegations before the court, it was PW 1 who misused the funds of the church. He relied on an audit report by Moore Stevens to substantiate that.

It was further his testimony that PW 1 never wanted to be replaced as the church's Conference Superintendent and this led to divisions in the church with PW 1 and

others in one camp and himself and others in another camp. Each camp running their parallel churches. Because of these divisions legal battles ensued.

He further told the court that on 6th June 2017 his camp was evicted from the Nancholi offices of the church. Reverend Steven Mbewe entered their offices at Nancholi and collected all documents therein. It was his further testimony that Reverend Mbewe was dismissed as a Pastor of the church because he had forged a Malawi School Certificate Examinations (MSCE) Certificate. Therefore, he could not trust him.

DW 2 was Mlenga Mvula. He informed the court that he was employed by the Malawi Judiciary on 1st December 2014 as Principal Press Officer Grade 7. He held that position until 2018. His duties included being the spokesperson for the Malawi Judiciary, the communication hub between the office of the Chief Justice and judicial members, writing speeches for the Chief Justice, communication hub between the judges, justices of appeal and the public, epicenter of all internal and external communication, dealing with court's complaints, responsible for press conferences, media coverage and so on and so forth.

He told the court that he related very well with both Judges, Justices of appeal and members of staff. He had no issues at any particular time with Judges or members of staff. He further told the court that he joined Malawi United Methodist Church in 2010. First accused was Conference Superintendent then. He said he was told that Jawati's tenure of superintendency had expired in 2006, after serving for two consecutive terms, as per Book of Discipline which guides the operation of the court worldwide.

It was further his testimony that in 2011, he was appointed as Finance Chair for Jerusalem circuit which had not less than 10 circuit churches. In 2015, when he came to Blantyre, he was briefed on the existence of Health Board and was later elected

as Finance Chair for health department. As the Finance Chair, he said he had the following duties; to oversee implementation of all health related department, to supervise the operation of health department, attend to issues arising from health department personnel, helping in ensuring that materials procured using the partner's money were accounted for and to organize meetings for the board meetings.

It was his further testimony that after being made the chair in mid 2015 he continued all the activities under Health Board which included disaster relief, clean water initiative, farming in Madise and a clinic at Nancholi and Madise in Dowa. That misappropriation and abuse of funds made partners to give up sending their funds through the church account at National Bank. They then devised a mechanism to channel their funds to Malawi through a missionary by the name of Karen Ujere. She was taken to rescue partners' funds from any abuse by some individuals within the church. She later opened an account with Ecobank with the sole purpose that partners could channel their funds to the church through that personal account. Signatories to the Ecobank account were Ujere, Tilika and first accused.

On litigation between Jawati and the first accused, he told the court that the two have been accusing and counter accusing each other. With Jawati still accusing the first accused that he reported him to the Bishop in Zimbabwe to remove him. He stated the two have had several litigations before Justices Potani, Dr Kachale, Muhara, Kenyata Nyirenda, Fiona Mwale, Nriwa, Ruth Chinangwa, Msiska. He said some of the litigations were concluded and other were not.

Commenting on the charges he said he was denying all of them. It was his evidence that PW2 (Steven Mbewe) was in 2012, dismissed as a Pastor on the ground that he forged his MSCE Certificate. And that he is the same Steven who broke into their offices in 2017 on the pretext of writ of possession. He chased Rev. Kambona and occupied the pastor's house at Nancholi in which the Rev. Kambona was staying.

It was his further testimony that Anti-Corruption Bureau (ACB) officers did not find anything at Nancholi and did not find anything at his office. That Steve Mbewe failed to explain in what capacity he was carrying out his activities at Nancholi. He said he doesn't know when the documents were collected from Nancholi by Steven Mbewe. On the issue of his scholarship, he told the court that he applied for it himself, and he never indicated that he was working for the Judiciary when applying for it, adding that the Scholarship Board does not seek any input from any person. He stated that like any other church member he got the scholarship on merit.

He further informed the court that at first tuition fees was K500,000 per academic year and later revised to K950, 000 per academic year. The scholarship was for accommodation and logistics. In 2016-2017, he said he submitted 300USD because of the adjustment of tuition fees. He was advised that the cheque will be in his name, and it was indeed in his name when the money came. He tendered his Diploma as part of evidence (EXP D2)

He stated the letter which is alleged to have been written by the first accused does not show where it was sent. The letter was never sent through or shared to him, and it is copied to the first accused. He also stated that he doesn't know Dr. Mande who is mentioned in that letter. He said even the amount is different as it talks about 1,800USD. He declined to comment whether the signature belongs to the first accused saying it was the first accused himself who is better placed to comment whether the signature is his or not.

On the issue of judges he stated that he was very surprised because Judiciary has so many judges and the letter does not mention the name of any judge. The letter does not mention the case number and letter talks about judicial spokesperson while was Principal Press Officer.

Coming to the Invoice allegedly from Chancellor College, DW2 said that he has never come across it and he never asked for it. On the K2,800,000 payment, he said

It's from the Methodist church paid in his name but was never meant to be given to the AG. The money meant for disaster relief after a resolution made after the Coordinator Chancy Nthonela had misappropriated funds amounting to K6,800,000 which were meant for procurement of mosquito nets for a community called Mwatchedwa in Nsanje District under the program of know malaria.

On the K150, 000 payment the subject of count 3, it was his evidence he withdrew the money, it was meant for Health Board meeting. Commenting on the Third-Party Acknowledgement Receipt (**Page 110 from state's bundle**) he said he came across it when he was arrested by ACB and during caution. He stated he has no knowledge of it because it does not contain his name. He said he would not comment on any document which does not bear his name.

Third party money deposit receipt date 31/01/2017. It has a signature but not his signature. That they do not have a position of finance officer, but treasurer and it was held by Karen Ujere, but she had since left for USA. On the Cabinet Resolution (**Page 102 (state's bundle)**) he informed the court that he has no idea about it because he is not part of the cabinet adding that the letter does mention acting treasurer which is not available at the church.

Reacting to the allegation on **Count 5** he just stated that he did not forge any document or Third Party Money Receipt saying the signature was not his. As regards **Count 6** he stated that Lindiwe Tilika (PW3) was the under study treasurer to Kalen Ujere and he never ever took any Third Party Money Receipt to her, and he has never ever brought any document to her. He said the money was receipted for everything which was purchased as part of the disaster relief plan.

On Count 7 and 8 it was his testimony that he does not know the originality of the receipts, who uttered them, and why he was charged with the money. He said he came across the documents when he was arrested and cautioned by ACB, ACB officials did not get any documents in his possession at house and

office. The signature is not his and they were not written in his name. He said the Karen Ujereh account was audited and no money was shown to have been misappropriated. He tendered the audit report as part of evidence. **(Page 26 DD 43)** DW2 went on to inform the court that he had a professional relationship with Justice Mwale as employees of the Judiciary. There were three cases on which he contacted her for information, because of the nature of his office, which the media wanted to find out. He denied the allegation that he took money from the church to give to Justice Mwale in order to influence her in the discharge of her duties. Similarly, he stated, that he also had a professional relationship with Justice Mkandawire. He denied the allegation that he got money from the church in order to influence him in the discharge of his duties as the Judge.

In cross examination he confirmed that the first accused person did not dispute his signature on **ID 15**. He stated that he had one of his email hacked in 2016 Or 2017. His email addresses prior to 2016 and these are mlengamvula@yahoo.com or mlengamvula@gmail.com. He denied approaching Justice Mwale on a matter he had an interest in.

Upon being referred to the Third Party Money Deposit Receipt on page110 (EXP 9C) his comment was that though the expert witness told the court that the handwriting was his, he has no knowledge of it as such he couldn't rebut the evidence given by the expert. He said according to the audit report PW3 was Acting Treasurer after Karen Ujereh had left. He declined to comment on what PW4 told the court that one of her roles was to file documents for the first accused. He said it was true that he admitted having cashed the cheques in issue but not the supporting documents. He said he got the cheques from Karen Ujereh.

He denied the email that PW4 showed to the court. **He said he wouldn't recall that PW3 told the court that she wrote the cheque for fees and not in the name of the college after she got an email which he was declining.**

In re-examination he stated that the mlengamvula@yahoo.com was opened around 2005 and around 2015 or 2016, the email password was saying invalid each time he tried to log in, which made him open another account as Mlengamvula@gmail.com. He said as the Health Board they had a different secretariat from the main secretariat therefore he couldn't know PW3's designation and roles. He said he did not tender in evidence his scholarship documents because they came through his yahoo email.

DW3 was Pastor Kalondole Donald Osman Nkhata. It was his testimony that he has been pastoring under United Methodist Church since 7th July 2012. His evidence was mostly of no relevance to the issues before the court.

DW4 was Hesten Mbezi. It was his testimony that he is a pastor at Nsanje UMC. He became a Pastor in 2009. He identified accused persons as Rev Mhone, Conference Superintendent and Mlenga Mvula, the chair of Finance of the Health Committee. He said he does not know the charges that these two are answering in this court.

DW5 was Maxwell Stenara. It was his testimony that he is the Development Advisor in Nkhotakota under Evangelical Lutheran Development Church Service but a congregant at UMC. He said he is church elder and advisor for the Conference Superintendent. He identified the two accused persons as Rev Mhone the Conference Superintendent and Mlenga Mvula the Finance chair for Health board respectively. As regards the charges the two accused are answering, it was his evidence that he does not agree that they misused money or misappropriated money. He said as a church they have never heard that the two misappropriated money.

In cross examination he stated that if it were true that the two had committed the offences then they would have known from their current parishes. Upon being shown the document on **page 101-102- IDD 9A** (cabinet resolution), he said it was written by the first accused and that he is not a member of the cabinet therefore

cannot respond to the issues made at cabinet level. He then admitted that he could not competently comment on the matters in court and issues on cabinet.

DW 6 was Pastor Frank Aichele. It was his testimony that he is a Pastor working with UMC in Germany. That the UMC in Germany and the UMC in Malawi are partners. The German UMC supports their counterparts in Malawi by sending money and missionaries. It was further his testimony that they do audit the accounts of the projects they support. He said they were surprised upon hearing the charges that the accused persons are answering as their money was used for the intended purposes.

In cross examination he said he does not know anything on the issue of invoices and receipts from Malawi.

DW7 was Reverend John Wagner. It was his testimony that he currently resides in the City of Anthony, Iowa in USA. He is a pastor at Anthony Methodist Church. He told the court that the church in the USA and Malawi are global partners in the ministry and they do support each other in various forms. He stated that his understanding is that Ujereh was one of the global members and believes that the funds that were sent through her account were meant for United Methodist Church and not Ujereh herself. He further stated that after funding a project in Malawi they get reports and statements which show them how the funds were being used and they could also have meetings in Malawi where they met the Conference Superintendent and other partners. They were satisfied with the reports sent by Provisional United Methodist Church in Malawi each time they got the reports on the projects that they funded.

In cross-examination by the state among others he said he was not aware of other methods through which the church in Malawi raised funds apart from their donations. **He was also not aware that money was allegedly paid to the Judiciary. He said he had no knowledge of the documentation before the court. He further told the court that as global partners they believed that the accused**

persons never committed offences warranting punishment from the partners.

He conceded that they did nothing after hearing of the charges

DW8 was Carol Cartmill. It was her testimony that she resides in Kansas, USA. She told the court that she is the lead Director of Mission Ministries for the United Methodist Church of Resurrection in Kansas, USA. She said she has known the first accused for the past 10 years as they have been in partnership. She explained that she knows Karen Ujereh, who was the Conference treasurer for several years in Malawi. She said they used to process funding, supporting the church in Malawi and receive reports for the funding provided under her guidance. She said their experience is that the projects have been executed to their satisfaction and found the charges before the court surprising

On scholarships she said that there have been several individuals that have been given scholarships in Malawi like to study at Catholic University. The Malawi Methodist Church board of education makes recommendations for people proposed to be scholarship recipients which the church is responsible for. Fees are paid directly to the institution.

In cross-examination by the state she said she is not aware of any role the second accused played in the church projects as they did not work directly with him; that her confidence was on the way accounting processes were done, they got reports and receipts for every project; that she may not be confident to answer on the charges before the court as she had not seen the documents before the court until **she received them from the state; that it would be correct to say that the documents were not included in the report they were sending to them.**

DW9 was Karen Ujere. It was her testimony that she is a retired missionary for Global United Methodist Church. She resides in Indiana, USA. It was her evidence that she was sent to Malawi in 2013 to work for FINCA and thereafter with Reverend Mhone, the Superintendent for UMC in Malawi. She knew the second accused as

someone with whom she attended the same church and Bible study in Blantyre. She left Malawi on July 2, 2016. She identified documents on page 383 (**EXP 22A**) as the documents to the Bank Manager at Ecobank for assisting her to open another account for Methodist Church at Ecobank.

When referred to **EXP 13C, EXP11D, EXP15D, EXP9F, EXP12D** she recognized the signatories of Reverend Mhone and Lindiwe Tilika but said that she did not authorize the payments because she had left and retired. She stated the payee on the cheques is Mr. Mlenga Mvula while the payer is United Methodist Church. She stated that in 2014, the Global Ministries asked her to be a treasurer of the Conference so they asked her to open an account in her name in which they could send money through it so that Reverend Jawati could not have access to the church funds in the church account.

Commenting **EX DD 43** she said she had time to go through the report and did not see anything about abuse of funds. According to the audit, Jawati is the only person who was responsible for the missing of funds.

After the testimony of this witness, the Defence closed its case.

The main issue for the court's determination is whether or not the prosecution has proved to the requisite standard of proof beyond reasonable doubt the charges against the accused persons.

This being a criminal trial, the burden of proving the guilt of the accused persons lies with the State or prosecution –section 187(1) of the Criminal Procedure and Evidence Code (Cap 8:01) of the Laws of Malawi:

“The burden of proving any particular fact lies on the person who wishes the court or jury as the case may be to believe in its existence, unless it is provided by any written law that the proof of such fact shall lie on any particular person. Provided that subject to any express provision to the contrary in any written law the burden of proving that a person is guilty of an offence lies upon the prosecution. “

It is a well established principle that the prosecution carries the burden of proof throughout a trial of a criminal case as a means of finding the truth in order to draw a contrary implication against the right to the presumption of innocence. It has thus been held that for the prosecution to discharge its burden it must prove the elements of the offence charged beyond reasonable doubt. There is no burden laid on the accused person to prove his/her innocence except in exceptional circumstances. In the famous and commonly cited case of **Woolmington –v- DPP** (1935) AC 462 at pp 487 Viscount Sankey, L had this to say:

“But while the prosecution must prove the guilt of the prisoner, there is no such burden laid on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the jury of his innocence.

Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception.....No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the Common Law of England and no attempt to whittle it down can be entertained.....It is not the Law of England to say as was said in the summing up in the present case: ‘if the Crown satisfy you that this woman died at the prisoner's hands then he has to show that there are circumstances to be found in the evidence which has been given from the witness-box in this case which alleviate the crime so that it is only manslaughter or which excuse the homicide altogether by showing that it was a pure accident....’

In the case of **Miller –v- Ministry of Pensions** (1947) 2 ALL ER 372 at 373 Denning, J buttressed the point as regards the burden of proof required when he stated as follows:

“That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence ‘of course it is possible, but not in the least probable’ the case is proved beyond reasonable doubt, but nothing short of that will suffice.”

This statement by Denning, J was approved by Smith, Ag. J. in the case of **Rep –v- Banda** (1968-70) ALR Mal. 96 at p. 98.

It is therefore the duty of the State or prosecution to prove each and every element of the offences they have proffered against the accused persons.

Has the prosecution proved beyond reasonable doubt the charges in Count 1 to 3? The charge on those Counts is Obtaining by False Pretences contrary to section 119 of the Penal Code. It provides as follows:

“Any person who by any false pretence, and with intent to defraud, obtains from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen shall be guilty of a misdemeanour, and shall be liable to imprisonment for five years.”

The prosecution is therefore required to prove that the 1st and 2nd accused persons made a false pretence with intent to defraud the United Methodist Church of money. Section 318 of the Penal Code defines ‘false pretence’ as *“any representation made by words, writing or conduct, of a matter of fact, either past or present, which representation is false in fact, and which the person making it knows to be false or does not believe to be true, is a false pretence.”*

In **Kusimbwe v R 2 MLR 286** it was stated that the offence is committed if the victim intends to part with ownership as a result of false representation of existing fact. Obtaining property by false pretenses is proved if the defendant makes a false pretense, intends to defraud and obtains from another something capable of being stolen. The offence bases on a false pretense. The offence is committed when the false pretense operates on another to release property (**R. V. Laverty, 54 Cr. App. R. 495; Metropolitan Police Commissioner v. Charles [1977] A.C. 177**). The defendant must make a false pretence as defined in section 318 of the Penal Code. The defendant must say words, write or present a writing or do some action whose effect is a representation of some fact. (**Mmehera Mputahero v R Crim Appeal no 28 of 1999**).

In the case of **Re London and Globe Finance Corporation [1903]1Ch. 728 at 732** the words to “deceive or defraud” were defined by Buckley J as follows:

“To deceive is to induce a man to believe that a thing is true which is false and which the person practicing the deceit knows or believes to be false. To defraud is to deprive by deceit; it is by deceit to induce a man to act to his injury. More tersely it may be put, that to deceive is falsehood to induce a state of mind; to defraud is by deceit to induce an action.”

In the matter at hand, there are 3 counts of obtaining money by false pretences against the accused persons with various amounts namely K2, 800,000.00, K2, 250,000.00 and K150,000.00.

It is alleged that the two accused persons with false pretence and intent to defraud obtained the aforementioned sums of money from the United Methodist Church on the pretext that the money was to be used for paying the Attorney General who at the time was Senior Counsel Kalekeni Kaphale, Justice Fiona Mwale and Justice Mkandawire (Judges of the High Court who were presiding over a civil case between two factions of the United Methodist Church) and legal costs for having a case between the State, the Attorney General and the Registered Trustees of United Methodist Church adjourned.

It is in evidence that the first accused on divers dates approached PW 3 (Lindiwe Tilika) who was Treasurer of the United Methodist Church and a signatory to the church’s account in the name of Karen Ujere, to process payment which was needed to pay the Attorney General, who at the time was Senior Counsel Kalekeni Kaphale, and Justices Fiona Mwale and Mkandawire (Judges of the High Court who were presiding over a civil case between two factions of the United Methodist Church) and payment for legal costs for having a case between the State, the Attorney General and the Registered Trustees of United Methodist Church adjourned.

PW3 referred to documents on pages 101 and 102 marked "Highly Confidential Matters" (EXP9A) and "pages 113 and 114 "DEVELOPMENTS OVER THE COURT CASE" and told the Court that these were the documents brought to her by the first accused to prepare the payments. PW3 stated that according to the requisition vouchers that the first accused initiated, she believed that the money was needed by the judges, the Attorney General and the court for various kinds of fees and hence she processed the payments.

PW3 further referred to EXP13C, EXP12D and EXP11D as proof of the cheques drawn in favour of the 2nd Accused, signed by herself and the 1st Accused and cashed by the 2nd Accused. The said purported beneficiaries of the money were paraded in court namely the Attorney General (PW14), Justice Fiona Mwale (PW10), Justice Charles Mkandawire (PW11) and (PW9) Justice Patemba who at the time was the Registrar of the High Court and Supreme Court of Appeal, representing the Judiciary as recipients of court fees. The said intended beneficiaries all denied having knowledge of the money which is the subject of Count 1, Count 2 and Count 3. They all denied making a request and receiving such amounts from United Methodist Church.

The question now is did the State discharge its burden beyond reasonable doubt to prove the requisite *mens rea* and *actus reus* for the offence of obtaining money by false pretence? It is trite law that the *actus reus* for the offence of obtaining money by false pretence is the actual obtaining of anything capable of being stolen. It has already been observed herein that the stated beneficiaries of the money denied making a request and receiving the said money. **Therefore, using** circumstantial evidence, there cannot be a better conclusion than that the said money was obtained by the 2 suspects herein as the evidence clearly shows that the 1st accused initiated the payment process and 2nd accused cashed and they obtained the money.

It is trite that the *mens rea* for this offence is with intent to defraud. In the case of **Re London and Globe Finance Corporation** (supra) Buckley J defined deceive and defraud as follows;

“To deceive is to induce a man to believe that a thing is true which is false and which the person practicing the deceit knows or believes to be false. To defraud is to deprive by deceit; it is by deceit to induce a man to act to his injury. More tersely it may be put, that to deceive is falsehood to induce a state of mind; to defraud is by deceit to induce an action.”

In the present case, the State submitted that the first accused person by deceit induced PW3 to prepare payment for the recipients with full knowledge that money was not meant for the purpose put in the requisition vouchers that he prepared and that the alleged recipients never demanded money. The action by the first accused deprived United Methodist Church who were the owners of the money which is the subject matter of Count 1, Count 2 and Count 3. PW3 also informed the court that the first accused on 9th July 2017 wrote her an email on page 167 advising her to reverse in the system 2 High Court receipts of 4 million and 2.2 million to relief instead of legal and all other receipts to remain legal. The email also asked her to keep her laptop away. The same email was copied to PW4 with advice to keep her laptop away from the house until crossing over. The 1st accused clearly knew that he had obtained the money by false pretences. His email to PW 3 and copied to PW 4 clearly establishes that the 1st accused person had the requisite *mens rea*.

Furthermore, the 2nd Accused was also aware that the stated recipients of the said money did not demand the money and he also did not give them the money notwithstanding that the money was cashed by himself. And as a pastor, the 1st accused ought to have known that bribery in whatever form is wrong.

I do agree with the State that it is clear in this case that the United Methodist Church parted with ownership of the money through the cheques in EXP13C, EXP12D and EXP11D because of false pretence by the first accused and second accused that the money was to be paid to the Attorney General, Justice Fiona Mwale, Justice Mkandawire and payment for legal costs.

Consequently I find that the charges in Counts 1-3 have been proved to the requisite standard and I find the accused persons guilty as charged and convict them forthwith.

Has the State proved the charge in Count four: Misuse of office contrary to section 25 B (1) of the Corrupt Practices Act beyond reasonable doubt? The second accused person is answering charges of misuse of public office, contrary to section 25(B)(1) of the corrupt practices which provides as follows;

Any public officer who uses, misuses or abuses his public office, or his position, status or authority as a public officer, for his personal advantage or for the advantage of another person, or to obtain, directly or indirectly, for himself or for another person, any advantage, wealth, property, profit or business interest shall be guilty of an offence.

Elements of the offence

The following are the elements of the offence of misuse of public office;

(a) that the Accused is a public officer

In respect of this element, the State paraded PW9, Justice Patemba who at the time was the Registrar of the High Court and Supreme Court of Malawi. In her oral evidence PW 9 told the Court that the second accused was at all material times an employee of the Judiciary. He was at the time the Spokesperson of the Judiciary.

The oral evidence of PW 9 was substantiated by the evidence of PW5 who was Angelina Phiri, PW12 who was Felix Makwinja, PW10 and PW11 who was Justices Mwale and Mkandawire.

The Second accused person told the court that he was employed on 1st December 2014 as Principal Press Officer Grade P7, the position he held until 2018.

Section 3 of the Corrupt Practices Act defines a public body to include government of which the Judiciary is part of. The second accused was therefore a public officer by virtue of his employment in the Malawi Judiciary.

Therefore, I am satisfied that the second accused person was a Public Officer.

b) that the Accused used his office to improperly confer an advantage on another.

In respect of this essential element the State tendered documentation like EXP 15A authored by the first accused in which he claimed that the second accused person was one of the high-profile people working with the Judiciary who would use his position to advance the Churches agenda by among other things influencing the decision of the Court in favour of the Church.

It was further very clear from the testimony of Justice Mwale that the second accused kept on interfering with her work to the extent that she asked him to be going through the Registrar and not directly approaching her if he needed any information in respect to the case concerning the church, that she was handling. This showed that the second accused used his office '*to improperly confer an advantage on another*'

Therefore, I am satisfied and left in no doubt that the second accused used his office 'to improperly confer an advantage on United Methodist Church.

c) that the Accused 'improperly conferred an advantage on another.

The word '*improperly*' indicates an element of dishonesty. The elements of the offence of abuse of office were considered by the Court of Appeal in the **Attorney General's Reference** (No. 3 of 2003) (2004) 3 WLR 45J where Pill LJ emphasized the need for 'a serious departure from proper standards before the criminal offence is committed' and that 'for such a departure to be criminal will not be merely negligent'. He went on to say that a mistake, even if it is a serious one, will not itself suffice. For Lord Widgery, CJ, the neglect, if all must be willful and not merely inadvertent and it must be without reasonable excuse.

Lord Widgery, CJ, rejecting the argument in the **Dytham (J 979) QB 722** case stated that '*misconduct in a public office is more vividly exhibited where dishonesty is revealed*'

In **R V Barron (1820) 3 B (and) Aid 432**, Abbott, CJ stated:

"The questions have always been, not whether the act done might upon full and mature investigation, be found strictly right, but from what motive it had proceeded; whether from a dishonest, oppressive or corrupt motive under which description fear and favour may generally be included or from mistake or error. In the former case, alone, they have become the objects of punishment".

Section 25B (1) of the Corrupt Practices Act clearly shows that the misconduct must be deliberate rather than accidental. The official must either have known that his conduct was unlawful or willfully disregarded the risk that his conduct was unlawful. Willful misconduct which is without reasonable excuse or justification is culpable.

In the matter at hand, it is clear from the prosecution's evidence that the 2nd Accused person misused his office as a spokesperson of the judiciary, as his persistent approach to the judges, especially Justice Mwale, was not only unprocedural, but it was motivated by his dealings with the Church and his attempt to defraud the Church

on the pretext that he was influencing the judges on the court cases of which the Church was party to.

I therefore find that the prosecution has proved its case against the 2nd accused in the Fourth Count and I find him guilty as charged and convict him forthwith/..

Whether the prosecution has proved beyond reasonable doubt the Charges under Counts five and seven, that the accused persons are guilty of the offence of Forgery contrary to section 356 of the Penal Code.

The accused persons are also answering charges of forgery, contrary to section 356 of the Penal Code which provides as follows;

Any person who forges any document shall be guilty of an offence which, unless otherwise stated, is a felony and he shall be liable, unless owing to the circumstances of the forgery or the nature of the thing forged some other punishment is provided, to imprisonment for three years.

Section 351 of the Penal Code define forgery as;

"Forgery is the making of a false document with intent to defraud or deceive."

The following are the elements of the offence of forgery:

- (a) The document must be forged
- (b) The accused used the document as genuine.
- (c) Accused knew or had reason to believe that it was a forged document and of the same kind and shall be liable to the same punishment, as if he had forged the thing in question.

It is very clear from the evidence by the prosecution that, the United Methodist Church had in their possession Third Party Money deposit Receipts purported to be from the High Court of Malawi with the sums of K2, 250,000.00 and K4, 000,000.00. According to the oral evidence of PW5 (Angellina Phiri), PW 14 (Thomas Makwinja) and PW9 (Justice Patemba), they denied the two Third Party Money deposit Receipts on the grounds that there are no fees for cancellation of Judicial

Review, fees for Judicial Review are not that excessive, the narration on the receipt is different from how they write their narration and that no such money was received by the High Court.

The State paraded Assistant Superintendent Justice Patrick Benard Nkhoma in order to determine who wrote these receipts, who was PW18. PW 18 is a handwriting expert working with the Malawi Police Service. He told the Court that he analysed documents including the Third-Party Money Deposit receipts in question and concluded that the handwriting on the receipts is that of the 2nd Accused person. He further noted that the signature on the document is different from that of the 2nd Accused person but the handwriting is that of the accused.

The evidence of PW5, PW 14 and PW9, clearly shows that the 2nd Accused person had no mandate to issue receipts. This opinion supports the submission by the State that since the Third Party Money Receipts with the sums of K2, 250,000.00 and K4, 000,000.00 were written by the 2nd Accused person, purporting that the Judiciary had received the said sums, when in fact the Judiciary did not receive the money and the 2nd Accused had no authority to do so, the State has proven beyond reasonable doubt the requisite actus reus of the offence of forgery namely by making a false document in form of the Third Party Money Deposit Receipts.

The Third-Party Money Deposit Receipts represent the sums of money that were requested by the 1st Accused person from the United Methodist Church through PW3 (Lindiwe Tilika). Further, the two accused persons made the Church (through Lindiwe Tilika PW3) to believe that the Third-Party Money Deposit Receipts of MK2, 800, 000 million and MK2, 250, 000 were issued by the Judiciary acknowledging the payments the church made, which fact was false.

The evidence presented to this court shows that the accused persons had a common intention to accomplish an unlawful act of deceiving the church through the Third-Party Money Deposits Receipts herein, for instance, it was the first accused who advised PW3 and PW4 to reverse transactions in respect of these payments from the system from legal to relief and keep laptops away from investigators. It can only be deduced that all this was done to cover the misconduct. Further, these receipts were brought to the church by the first accused and the second accused

I am satisfied that the State has proved beyond reasonable doubt the charges in Counts 5 and 7 and I find the accused persons guilty as charged and convict them forthwith.

Counts Six and Eight

The accused persons were answering charges of uttering false document, contrary to section 360 of the Penal Code which provides as follows;

Any person who knowingly and fraudulently utters a false document shall be guilty of an offence of the same kind and shall be liable to the same punishment, as if he had forged the thing in question.

It is unfortunate that the defence wrongly observed that observed that Count six has reference to a wrong law and that it cannot be cured as that should have been done during the trial process. The Charge was properly under section 360 of the Penal Code as I can tell from the record.

To prove that the accused persons are guilty of the offence of uttering a false document, the State must prove that the two accused persons uttered a false document Knowingly and fraudulently.

According to section 4 of the Penal Code "knowingly" used in connection with any term denoting uttering or using, implies knowledge of the character of the thing uttered or used. Under section 4 of the Penal Code "utter" means and include using

or dealing with and attempting to use or deal with and attempting to induce any person to use, deal with or act upon the thing in question.

In the case of **Naomi Masai v The Republic**, Criminal Appeal No. 112 of 2005, Chombo, J, construed as fraud the appellants actions of taking money from the complainant on a pretence that she would facilitate the complainants' trip to the UK when *she knew or must have known* that she was not in the business of facilitating trips to the UK for people.

In the matter at hand the accused persons have been charged with uttering false documents namely Third-Party Money Receipts to PW3. According to the evidence of PW3, the requisition documents were brought to her by the 1st accused person for her to process payment in favour of the 2nd accused person. She told the Court that she prepared the cheques in the 2nd accused person's name and he cashed them. PW3 further stated that the 2nd accused person brought Third-Party Money Deposit Receipts to her for reconciliation for the money that he got from the church. The first accused person also gave reconciliation reports on the same transaction to PW3.

It has already been established that the accused persons knew or must have known falsity in the receipts namely that no money was paid to the Judiciary and the Judiciary did not issue any receipt for MK2, 800, 000 and MK2, 250, 000 as per the evidence of PW5, PW9 and PW14.

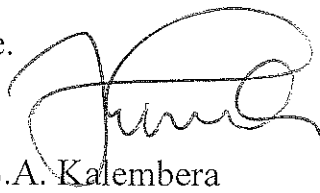
Hence the intention of uttering the Third Party Money Deposit Receipts was to make the church through PW3 believe that money was paid to the Judiciary. Accordingly, PW3 and PW4 filed the receipts as part of the Church's records. Section 22 of the Penal Code is to the effect that when two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.

In accordance with section 22 of the Penal Code I am satisfied that both accused persons are guilty of uttering Third Party Money Deposit Receipts with the intention to deceive the church that money was paid to the Judiciary when such was not the case according to the evidence of PW5, PW9 and PW 14. The 2nd Accused person forged the said Third Party Money Deposit receipts. The two accused persons knowingly uttered false documents namely Third Party Money Deposit Receipts to PW3 and PW4 for the Church to believe that the money which they issued to the 2nd Accused person was paid to the Judiciary when such was not the case.

I therefore find the accused persons guilty as charged under Counts 6 and 8 and convict them forthwith.

All in all, all the evidence before this Court I am satisfied that the prosecution has proved beyond reasonable doubt all the charges brought against the accused persons and I find the accused persons guilty as charged and convict them of all charges forthwith. Having thus convicted them I revoke their bail forthwith and they must be remanded in prison pending sentence. Both parties to file written submission on mitigation of sentence.

PRONOUNCED in Open Court this 29th day of November 2022 at the Principal Registry, Criminal Division, Blantyre.



S.A. Kalembera

JUDGE