IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

CORRUPTION AND ECONOMIC CRIMES DIVISION

DAR ES SALAAM REGISTRY

ECONOMIC CRIME CASE NO. 01 OF 2017

THE REPUBLIC

VERSUS

1. **RAYMOND ADOLF LOUIS**
2. **KHALID YUSUPH HASSAN**
3. **HARUNI LYSON MPANDE**
4. **KHAMIS ALLY OMAR**
5. **BENSON VITALIS MALEMBO**

JUDGMENT

Date of Last order: 19th March 2019

Date of Judgment: 25th March 2019

Korosso, J.

We premise by putting forth the charges leveled against the Accused persons before the Court. To start with, it is important to note that originally, the charges before the Court were against seven accused persons, as per the information filed in this Court. This status changed, pursuant to a decision of this Court, delivered on the 9th of November 2018, with a finding that, the Prosecution has managed to establish a prima facie case against only five accused persons, that is, accused No. 1 to No. 5 respectively, and held that, they are the ones who had a case to answer. This meant only five

accused persons remained. The other two accused persons, that is, David Faustine Chimomo (6th accused) and Safina Kassim Rupia (7th accused) with the finding of the Court that the prosecution failed to establish a prima facie case against them on the charges they faced, they were subsequently acquitted.

With that background, it is important to present the charges before the Court. In the First count, **Haruni Lyson Mpande** (3rd accused) is charged with Illegal Computer Data Deletion contrary to section 7(1)(b) of the Cybercrimes Act, 2015.

Raymond Adolf Louis (1st Accused and **Khalid Yusuph Hassan** (2nd Accused) faced 105 counts (from Count No. 2-106) of Forgery contrary to sections 333, 335(a) and (d)(i) and 337 of the Penal Code, Cap 16 RE 2002 (the Code) with respect to various transactions specified in each respective count.

Raymond Adolf Louis (1st accused), **Khalid Yusuph Hassan** (2nd accused), **Haruni Lyson Hassan** (3rd accused), **Khamis Ally Omar** (4th accused), and **Benson Vitalis Malembo** (5th accused), in Count no. 107 are charged with Occasioning Loss to a Specified Authority, contrary to paragraph 10(1) and (4) and sections 57(1) and 60(2) of the Economic and Organized Crime Control Crime Control Act, Cap 200 RE 2002 (EOCCA).

In count No. 108, **Raymond Adolf Louis,** (1st accused) is charged with Money Laundering, contrary to sections 12(a) and 13 (a) of the Anti-Money Laundering Act, No. 12 of 2006. Charges in Count No. 109, **Khamis Ally Omar** (4th accused) stand charged with

Money Laundering contrary to section 12(a) and 13(a) of the Anti-Money Laundering Act, No. 12 of 2006 as amended. In Count 110 (in the alternative to count no. 107), **Raymond Adolf Louis** (1st accused), **Khalid Yusuph Hassan** (2nd accused), **Haruni Lyson Hassan** (3rd accused), **Khamis Ally Omar** (4th accused), and **Benson Vitalis Malembo** (5th accused are charged with Aiding Tax Evasion contrary to section 80 of the Tax Administration Act, 2015. The accused persons pleaded Not Guilty to all the charges facing them in each count respectively.

Before the Court, the Prosecution team for the most part was led by Mr. Timon Vitalis, Learned Principal State Attorney and Mr. George Barasa, Learned State Attorney. For the 1st accused person he was represented by Mr. Wabeya Learned Advocate, and Ms. Talha and then Mr. Kunju learned Advocates represented the 2nd accused person. The 3rd accused person counsel was Mr. Nehemiah Nkoko learned Advocate, Mr. Njama and Mr. Martin Learned Advocates represented the 4th accused person and for the 5th accused person, he was represented by Mr. Mshana learned Advocate. The Court wishes to extend appreciation for their commitment, industry and hard work in representing their clients and assisting the Court during their appearance, arguments and submissions.

Taking account of the volume of the evidence presented in Court by both the prosecution and defence, consideration and determination of the case will proceed sequentially in terms of charges before the Court. Though I find it germane by first proceeding

to consider and determine the evidence relating to charges in count No. 2 to count 106 against the 1st and 2nd accused persons.

These charges particulars as advanced by the prosecution, are that between the 11th day of July and 28th of October 2015, a total of 329 containers containing various items were seized by Azam ICD from Dar es Salaam Port for storage, pending custom's clearance. That the transfer of the 329 containers from Dar es Salaam Port to Azam ICD was done at the instance of XL Clearing and Forwarding Ltd. It is alleged further that from 25th day of July to 12th day of November 2015, the 329 containers were unlawfully cleared at Azam ICD without payment of relevant import taxes and port charges, though the ICD charges were paid to the ICD operator before the containers were cleared out. It was also contended that the clearance of the said 329 containers at Azam ICD was done by Regional Cargo Services Ltd, a clearing agent company, whose licence to operate had been revoked as of the 21st of October 2013 by the Commissioner for Customs. At the same time that Regional Cargo Services Ltd. was a different clearance agency company from the one that had requested the transfer of the relevant containers from Dar es Salaam Port to Azam ICD, an unusual feat.

The prosecution also contended that there was unlawful clearance of the 329 containers from Azam ICD, and that the unlawful clearance of these disputed containers was perpetrated by using several tricks. That the tricks used include the use of clearing agent whose licence to operate was already revoked by the

Commissioner of Customs in the 2013. That another trick used was deletion from the TRA computer system, that is, TANCIS, a manifest of information regarding the said containers, in order to impede the determination of their existence in the system, and bar the containers tracking and discovery of the fraud occasioned. That the deletion of the manifest information from the TANCIS system occurred immediately upon reception and registration of the containers within the Azam ICD system known as CAPELLA.

The other alleged trickery alleged to have been exerted by the 1st and 2nd accused persons was falsification of the customs release orders, in which 110 forged release orders are alleged to have been used to clear out and facilitate removal of the 329 containers from Azam ICD. There was also an omission, which as presented by the Prosecution, was failure by Regional Cargo Services Ltd, to declare in TANCIS, the estimated value of import taxes. That the assessment of the import taxes for the goods contained in the clearance of the disputed containers was not carried because it was not posted in TANCIS. That there was also the fact that the disputed containers were removed after working hours in the absence of any TRA or TPA officials at Azam ICD.

The Prosecution also sought the Court to disregard the depicted defence from the accused persons, arguing that it was not supported by evidence nor did the defence show or claim that the disputed release orders were genuine and issued by TRA. The prosecution contended further that what the accused persons did in Court was

distancing themselves from the release orders, and thus the prosecution prayed for the Court to find that the said defence did not in any way dent the prosecution case. The prosecution further arguing that the defence, failed to show that taxes relating to the 329 containers whose particulars appear in the disputed release orders (Exh. P5) were paid. The Court was hence implored to find the witnesses for the prosecution credible and reliable. Therefore, the prosecution prayed for the Court to find that they have proved the charges of forgery contrary to section 333, 335 (a) and (d)(i) and 337 of the Penal Code, as outlined in Count 2 to 106 against the 1st and 2nd accused persons.

Moving to the defence case in summary, on the charges under consideration (count 2 to 105), on the part of the 1st accused person, he started by challenging the charges of forgery arguing that they are defective. That the charges filed and admitted in Court have failed to reveal that it is the 1st and 2nd accused persons who signed the release orders, loading orders and get out passes. That at the same time if the Court was to proceed with the charges as they are, the prosecution have failed to prove the offence of forgery as required by law, since the four elements under the law to prove forgery have not been proved. That the prosecution have failed to prove first that the document is false. Two, that the knowledge that the document is false. Third, that the intention that the same be used or acted upon in the belief that it is genuine, and (iv) and the prejudice of any person or with intent that any person may, in the belief that it is genuine, be induced to do or refrain from doing any act have not been proved.

That the prosecution have also failed to prove that that the 1st and 2nd accused persons signed the document in the name of any person without authority.

On the part of the 2nd accused person defence, he asserted that there was no proof by the prosecution that the 329 containers alleged to have been found missing were removed from Azam ICD premises. Arguing that there were doubts raised on the credibility of PW7 evidence, the handwriting expert having regard to the discrepancy in dates, from oral narration to the analysis report presented in Court. Therefore they prayed the Court to find the 1st and 2nd accused person not guilty of the offences charged in count no. 2 to 106.

Let me now proceed to consider and scrutinize the evidence presented in Court by both the prosecution and defence, relating to charges in counts No. 2 to 106, that is, Forgery contrary to sections 333, 335(a) and (d)(i) and 337 of the Penal Code, Cap 16 RE 2002, levelled against the 1st and 2nd accused persons. The two accused persons, Raymond Adolf Louis and Khalid Yusuph Hassan are accused of forging the disputed release orders which were part of the evidence admitted by the Court and marked as Exh. P5 and having Annexures A1 to A105.

It is important before venturing into analysis of all the evidence before the Court, to highlight issues to be addressed by the Court relating to Count No.2 to 106 as presented hereinabove. There is no doubt that the foremost issue to premise with for determination is whether the charges framed are proper, since it was one of the issues

raised by the defence. This issue arose from the defence presented in their final submissions. Thus, the Court will first consider and determine whether the charges in count no. 2 to 106 against the 1st and 2nd accused person are defective and if so, whether the defect discerned is fatal or curable. Second, where count no. 2 to 106 is found to be proper, the Court will proceed to determine whether the 1st and 2nd accused person with intent to deceive, forged various release orders as expounded in the particulars of charges in count No. 2 to 106. Third, whether the Prosecution proved their case beyond reasonable doubt as it relates to Counts No. 2 to 106.

Proceeding to the first issue on whether or not the charges of forgery against the 1st and 2nd accused person in count no. 2 to 106 are proper, the argument by the defence being that the charges have failed to disclose any known offence under section 335(d)(i) of the Penal Code. That the particulars in the stated counts do not specifically state that the 1st and 2nd accused persons did sign the disputed documents in the name of any other person purporting to show that the said person signed or authored the documents. That there is nowhere in the charge sheet that state that the 1st and 2nd accused persons signed release orders, loading orders and or gate out passes. The defence buttressed this argument by citing a Court of Appeal case of ***DPP vs Shida Manyama @ Seleman Mabuba***, Criminal Appeal No. 285 of 2012 (unreported). In this case addressing the issue of what should constitute a charge under section 335 (d)(i) of the Penal Code, the Court stated at pg. 22:

"the particulars ought to have specifically stated that the respondent did sign the disputed letter in the name of Hamisi Msuka purporting to show that he had been paid compensation". Therefore in the absence of this, the Court of Appeal contended, that the charges in the respective count to be defective, stating this is because they stated; *"it disclosed no known offence in law under section 335 (d)(i) of the Penal Code and also lumped tow offences under (a) and (d)(i) together"*. They went on to state that, this defect notwithstanding, a Court may proceed to consider and determine the charges where it is in the interest of justice to dispose of the matter where the defects are cured by the evidence adduced in the trial.

This Court, before delivering this judgment found it pertinent, to invite the defence for the 1st and 2nd accused persons and the prosecution to address this issue on whether the said charges are proper. This is because the issue was raised by the defence, in their final submissions and since the parties had agreed to file submissions on the same day to expedite the process, the prosecution had no opportunity to address this matter.

On the part of the defence, they sought the Court to adopt the contents of their final submissions on this issue as narrated hereinabove, and stated further that the charges have not complied with the requirements of the second schedule to the Criminal Procedure Act, Cap 20 R.E. 2002 (CPA) as argued by the Prosecution. Arguing that, there was a need to specify the signatures of the person

whose document is purported to have been forged and that the charges as they are did not.

On the part of the prosecution, the lead counsel, Mr. Timon Vitalis, Learned Principal State Attorney, response on contentions that the charges failed to name the person who forged the documents, was that this is not necessary, grounding their arguments on the specimen charges relating to forgery, as contained in the second schedule to the CPA. The prosecution arguing that the said specimen charges do not require the person whose signature is alleged to have been forged to be named. That the only requirement is for the person drafting the charges to show what the document purports to be what it is not. That the charges in count no. 2 to 106 show there were forged release orders which purported to show they were lawfully issued by the TRA. That the said words are enough to constitute the offence of forgery and details on how forgery was committed are matters of evidence which need not be presented in the particulars of offence. That in any case in this case the prosecution led evidence proving why the prosecution alleges that the forged release orders were not issued by TRA.

The prosecution also submitted that if the Court was to hold that there was such an error in count no 2 to 106 charges, what the Court is required to consider and determine is the effect of such omission, that is the defect in the charge if any, and to consider whether such defect is fatal and there is proof of miscarriage of justice. It was the prosecution submission that in that situation,

there is no any miscarriage of justice in this case. The case of ***DPP vs. Shida Manyama*** (supra), cited by the defence in their final submissions, at pg. 22, where, the Court of Appeal held that a defect in the charge can be cured by evidence adduced at the trial if the evidence made the accused understand the nature of the offence he was facing then the defect in the charge is curable. Therefore, building on this finding, the prosecution prayed for the Court to find that if there is any defect in the charges as alleged, it is curable, since the prosecution has led evidence which made the accused persons aware and understand the nature of the forgery charges they are facing in this Court.

Having heard the submissions from the defence and the prosecution on this issue relating to the appropriateness of the charges outlined in counts no. 2 to 106 facing the 1st and 2nd accused, this Court finds it is pertinent to start by revisiting the charges under scrutiny. The statement of offence for count no. 2 to 106 invariably reads:

Forgery: contrary to section 333, 335(a) and (d)(i) and 337 of the Penal Code, Cap 16 RE 2002

What is being challenged though are the particulars of the offence, and though different for each count, since it reflects particularity of specific event or actions specified in the charges, despite this obvious stance, the Court will use count no. 2 as a sample, because the wordings are similar for all counts but differentiated by the different TANSAD Numbers and the dates. It states:

"Raymond Adolf Louis and Khalid Yusuph Hassan on 24th July, 2015 at Azam ICD Sokota area within Temeke District in Dar es Salaam Region, with intent to deceive, forged customs release order bearing TANSAD Number TZDL-15-1029081 purporting to show that it was lawfully issued by Tanzania Revenue Authority, Customs and Excise Department, Dar es Salaam".

Looking at these charges, I am of the view that the charges, that is the statement of offence and particulars of offence, have complied with what is specified under the Second Schedule to the Criminal Procedure Act, Cap 20 RE 2002, on how a charge and statement of offence related to an offence of forgery should contain. Examining the particulars of offence, and guided by the above cited case, it is an undisputed fact that, the particulars of the offence in count no. 2 to 106, do not state that either the 1st or the 2nd accused persons did sign the release orders or gate passes, or the name of the person or persons who is purported to be the one expected to sign, or to have signed, but it expounds on the fact that the 1st and 2nd accused person with intent to deceive, forged certain release orders whose numbers are particularized and specific in all the counts under scrutiny, and that the forged release orders purported to show that they were lawfully issued by TRA. We find from what is seen in the charges, there is no doubt that the elements of forgery are outlined therein.

But in any case, even if one was to argue there is a defect in the charges as expounded by the defence, this Court finds find that relying in the holding in the Court of Appeal case of ***DPP vs Shida***

Manyama @ Seleman Mabuba (supra), which gives discretion to a Court, despite finding a defect in the charges, in the interest of justice, to proceed to consider and determine the charges where the defects are cured by the evidence adduced in the trial. We thus find having regard to the adduced evidence related to alleged signing of the release orders by the 1st and 2nd accused person, even if it was to be stated there is a defect in the charges of forgery as contained in count no. 2 to 106, the said defect is not fatal but curable since there is no doubt, that the accused were made to understand the charges they face in those counts are those of forgery through the evidence presented by the prosecution witnesses who testified in Court. Therefore, I find this issue in the negative, and the charges queried by the defence are proper.

The prosecution allege that the 1st accused person is connected to the charges in the counts under consideration, because at the time the alleged offences occurred, he was the Operations, Safety and Security Manager at Azam ICD and had access to TANCIS and was responsible for verifying the authenticity of the release orders submitted to him by clearing agents. It has also been stated that the 1st accused person was responsible to ensure the authenticity of the release orders before taking any further action, and this would have been done by crosschecking with the Government revenue payments information available in TANCIS before endorsing release orders and issuing loading orders and gate passes. Thus it was contended by the prosecution that the 1st accused person failure to do this and by proceeding to allow removal of the respective containers in the

absence of TRA officials and also failure to record in the TANCIS that the containers were cleared for removal by the clearing agent is also another black mark against him.

One element of forgery is that, the forgery must be with intent to deceive. The prosecution argue that since the containers were cleared and no evidence to show that the import taxes for the 329 containers was paid and the release orders used to clear the containers, without doubt were forged, that it then follows that, the intention of the person who was behind the forgery was to deceive TRA and Azam ICD or any other Law Enforcement Agency.

The case of ***Sifano Ochanda Oketch vs. Republic*** (1972) HCD No. 223 was cited. In this case it was held that; *"to defraud is to deprive by deceit whereas to deceive I by falsehood to induce a state of mind"*. For the prosecution, the evidence related to intent to deceive is inferred under section 122 of the Evidence Act, Cap 6 RE 2002 from the purpose for which the forged documents were intended to be used. The prosecution contended that the evidence presented in this Court lead to no other position but that a release order is the primary document for release of any container from a customs controlled area, inclusive of ICDs.

That this being the position, and in effect, a fact not disputed by either the Prosecution or defence, the issue for consideration and determination, remains to be *"who forged the release orders is disputed and calls for determination by this court"*.

On the question of proving and determining those who committed the forgery of the 105 release orders admitted and marked as Exh. P5, Prosecution side called a number of witnesses intended to prove that the disputed release orders ought to have been printed from the TRA system, that is, TANCIS, signed, registered and dispatched to Azam ICD to effect the cargo clearance process. These witnesses' included; Eliaichi Heriel Mrema (PW5), Raya Ramadhani Ibrahim (PW6), Zulfa Mohamed Marira (PW8) and Rehema Kassim Siguda (PW10), all employees of TRA situated at Azam ICD. The witnesses' testimonies aimed to prove not only that the disputed release orders are false in that they did not originate from TRA but also that they were forged with intent to deceive TRA purporting to show that import Taxes and dues have been paid relating to the dispute 105 release orders (Exh. P5) while this was not the case, not having being paid. That at the same time Customs officials at Azam ICD did not authorize release of any container where the agent was Regional Cargo Services nor attend to any documents submitted by Regional Cargo Services to initiate cargo clearing process.

PW5, the Customs Officer in Incharge at Azam ICD and her assistant PW10, testimonies were that, the Release Orders were supposed to be signed and denied having signed or endorsed the disputed Release Orders nor in anyway attending to them or any cargo cleared by Regional Cargo Services. PW5 was the one who tendered Release Orders Registers/dispatch books admitted as Exh. P2. This was for the purpose of proving that the disputed Release orders did not originate from TRA. That the said Release orders were

never registered in Exh.P2 which contained all particulars of release orders dispatched to TPA and Azam ICD to facilitate release process of the relevant containers.

PW6 and PW8 who were Custom Preventive officers evidence at the time, was to deny attending to any containers cleared by Regional Cargo Services Ltd. To fortify this assertion, the Prosecution through PW6 tendered the cargo gate out passes registers admitted and marked as Exh.P3 to show that the disputed containers whose numbers appear in the disputed Release Orders were not registered by the Preventive Officers in the gate out passes. PW10 and Ghati Nyagande (PW11), were TRA officials charged with the duty to verify the cargo before clearance of cargo for removal from ICD, denied verifying any cargo cleared by Regional Cargo Services.

In their endevour to further reinforce the assertions of forgery against the 1st and 2nd accused persons, the prosecution also called PW7, ASP Christanus Kitandala, who testified to have examined and analysed the handwritings in the disputed release orders and also determined whether the documents contained the signatures of PW5. His findings were that this was not the case. From the analysis done by PW7, the signatures in the release orders purporting to belong to PW5, did not belong to her. At the same time that the words "*TPA/ICD proceed*", appearing in the disputed release orders were written by the 2nd accused person, Khalid Yusuph Hassan. PW7 was also of the opinion that one of the signatures in the disputed release orders was signed by the 1st accused person, Raymond Adolf Louis. PW7 report

was admitted and marked as Exh.P5. PW7 whilst in Court also demonstrated the basis of his findings and opinion having used photographic enlargements that form part of Exh.P5 during examination in chief and cross examination from defence counsels.

The Prosecution contended that PW7 testimony and Exh.P5 further strengthened their assertion that the disputed release orders are false, in that they were not signed by customs officials as they purport to be, but that they were forged by the 1st and 2nd accused persons considering PW7 evidence stating that their signatures appears in the disputed release orders.

The other method used by the prosecution in proving their case, was by calling witnesses contending to be acquainted with the signatures of the 1st accused person. These were, PW1, Ashraf Khan and PW2, Kessy Mkambala. These two witnesses during their testimonies, stated that they were conversant with the signatures of the 1st accused person, having worked with him for some time (each specifying the time they had worked with the accused). When the two witnesses were shown the disputed release orders and gate out passes which are part of Exh. P5, managed to identify the 1st accused person signatures. For the prosecution, they were of the view that, this act of PW1 and PW2 identifying the 1st accused person signatures in the disputed release orders and gate out passes, should lead the Court to find that it is the 1st accused person signatures in the relevant gate out passes and 2nd accused persons writings of "*TPA/ICD proceed*" in the release orders enfolded in Exh. P5. The

Prosecution sought the Court to be guided by the decision of the Court in ***Joseph Mapema vs Rep.*** (1986)TLR 148, where the Court held that, the opinion of a person who is conversant with signature or writing of a disputing author is the best evidence than the opinion of a handwriting expert.

The Prosecution, also called witnesses whose role was that of making comparisons of the disputed and undisputed documents in Court, as a way to prove forgery against the 1st and 2nd accused persons. Ayubu Anael Mbowe (PW13), Samwel Mori Ebenezer (PW18), Benjamin Charles Maria (PW27) and Farence Mniko (PW30). These witnesses while in Court had an opportunity to make comparison of the disputed and undisputed release orders from the TRA computer system (TANCIS) and show/reveal alleged discrepancies in the disputed orders. Testimonies of these witnesses were intended to lead the Court to draw an inference of falsity of the disputed documents. The undisputed release orders printed from the TRA-TANCIS were admitted as Exh. P8, Exh. P10-19, and Exh. P22. The argument being that the particulars from the alleged forged release orders don't tally with the particulars of the said original/genuine release orders generated from TANCIS. Further to this, the prosecution contended that comparison of the two sets of release orders has proved that the set of release orders marked Exh. P5 is false. At the same time that some of the release orders in Exh. P5 show payment of taxes for exports and transit goods which in law do not attract taxes and the name Regional Cargo Services Ltd. as a clearing agent, does not appear in all the corresponding original release orders admitted and

marked as Exh. P8; Exh. P10-19 and Exh. P.22 which were generated from TANCIS.

The prosecution also submitted that they have proved that the 1st and 2nd accused persons forged the disputed release orders related to the un-procedurally removed containers having regard to the contents of the disputed documents. The argument being grounded on the fact that the testimony of Kalunde Suleiman Kisesa (PW9), who compared the doubted release orders and the original release orders in the TANCIS whose TANSAD numbers proved they were forged. That this put together with her report purporting to contain an analysis of computer usage and systems control and management which was admitted and marked Exh. P6. Prosecution are of the view that this can be discerned from various findings outlined in the said report: (i) that there was an error in the name of customs offices. The alleged forged release orders read "DAR COSTOMS SERVICE CENTRE" whereas the actual name is "DAR CUSTOMS SERVICE CENTRE; (ii) the manifest numbers used in the disputed release orders are arranged properly; (iii) some of the disputed release orders used TANSAD numbers of release orders that had been previously used to clear cargo in other customs controlled areas like Namanga, Kabanga, Rusumo, Tunduma, Mutukula, Tanga, JNIA, Kasumulo, Horohoro, Tarakea, Holili and Mwanaa Airport; (iv) the disputed release orders bear wrong digit numbers of the year on which the documents were issued. A valid TANSAD number issued in 2015 bear two digits only, "-15" TANSAD number in the disputed release orders bear eight digits while the system allows only seven digits; (v) three

TANSADs were used more than one time while in practice one TANSAD is used once for one bill of lading; (vi) The disputed release orders bear the name of Regional Cargo Services as clearing agent. Tiagi Masamaki (PW28), tendered customs agency licence revocation letter marked Exh. P.20. to prove that Regional Cargo Service had no capacity to operate at any customs controlled area because their licence was revoked since 12/10/2013. For the prosecution, there being the name Regional Cargo Services Ltd in the disputed release orders is another proof offered by the documents themselves that they are false since Regional Cargo Services Ltd was not a clearing agent and therefore did not exist in 2015.

The Prosecution also argued that they have proved forgery charges under discussion by circumstantial evidence, and that inference can be drawn from the following situations;

(i) that the alleged forged release orders were found in exclusive possession of the 1st accused person who hid them at his house until he was forced by PW1 to produce them. The argument being that this was proved by the evidence of Ashraf Khan (PW1), Mkambala (PW2) and Salum Iddi Omary (PW4). The Prosecution cemented this argument by citing the holding in ***Alley and Another vs R*** (1973) LRT No. 43, where this Court held that, forgery can be proved by circumstantial evidence if there is evidence that the disputed document was in exclusive possession of the accused at the material time, the accused person is presumed to be the one who forge the

document even if the document does not bear his handwriting or signature.

(ii) as argued by the prosecution is that, the gate out passes admitted and marked as part of Exh. P5 as testified by various witnesses, were required to be signed by two managers but in the present case they were signed by one manager only. Contending that PW1 and PW2 recognized the signatures in gate out passes as the signature of the 1st accused person from whose possession the documents were recovered from. That as per the evidence before the Court, since the gate out passes were supposed to be prepared after verifying the authenticity of the release orders in the TANCIS, the signature of the 1st accused person in the gate out passes has implications. First, that the 1st accused person knew the release orders did not come from TRA TANCIS because he had access to the system for verification of the authenticity of the release orders which he did not do the expected. Second, that it implies he was a party to the alleged forged release orders and that is why he proceeded to act upon them without verifying their authenticity from TANCIS as required.

Third, it is contended that, the 1st accused orally confessed to PW1 in the presence of PW2 and PW4 that the signatures in the disputed release orders are his. That the 1st accused person further confessed to PW1 that he is the one who authorized the release of containers from Azam ICD because he was told that they had been deleted from TANCIS. The case of ***Patrick Sanga vs. R.***, Criminal Appeal No. 213 of 20018, was cited by the Prosecution to substantiate the position

propounded. In this case, the Court of Appeal held that, in terms of section 3(1)(a), (b), (c) and (d) of the Evidence Act, Cap 6, a confession can be oral and can be made to anybody even a civilian provided it is made voluntarily.

The other issue, (iv.) was that the 1st accused person instructed PW3 to omit recording containers cleared out by Regional Cargo Services clearing agents from appearing in the daily reports that were being submitted to the TRA. This fact, the prosecution argued, was proved by PW4's testimony.

(v) That Regional Cargo Services which it is stated was used to clear 329 containers illegally, did not exist in the customs agents' register or TANCIS in 2015 since their registration was revoked as of 21/03/2013, evidenced by a revocation letter which was admitted and marked Exh. P20, tendered by PW28 who was the Commissioner for Customs at the time. The prosecution thus submitted to the Court that taking all these factors into consideration, and having regard to the fact that the 329 containers release orders beared the name Regional Cargo Services, there is no other explanation but that they were forged because the concerned clearing agent ceased to exist in the role of Customs agent as of 2013.

The Prosecution alleged that apart from the evidence from the testimony of prosecution witnesses there is also Exh. P5, which are release orders. That despite the fact that the disputed 329 containers whose release orders (Exh. P1) were cleared, there was no evidence to show that related taxes and dues were paid. That the evidence

before the Court is that the release orders used to clear the said containers were fake and thus it shows that the intention of whoever was behind the forgery was to deceive TRA and Azam ICD and other law enforcement agencies that import taxes was paid while it was not the case.

Another matter raised against the 1st accused person on the charges in the counts under scrutiny, is that the responsible clearing agent, that is, XL Company Ltd, a sister company to Regional Cargo Services and also owned by one person AbduKadir Kassim Abdi, paid into the personal account of the 1st accused person situated at CRDB, a sum of Tshs. 686,868,000/-, funds of which later Tshs. 254,386,761/- was transferred from the 1st accused account to Azam ICD account, meaning that the 1st accused person remained with a balance of Tshs. 432,481,239/-, alleged to be his share of the proceeds of the alleged committed fraud.

The case against the 2nd accused person as propounded by the Prosecution regarding the counts under scrutiny, is that, the 2nd accused signature was in the release orders. The Handwriting Expert Report admitted as Exh. P5 and PW7 evidence (being the one who took the 2nd accused handwriting samples). There is also the evidence of PW1 who stated he was conversant with the 2nd accused person signature and recognizing it in the release orders. The connection being that the said release orders contained the 2nd accused person signatures. That the forged signatures had intent to deceive both Azam ICD management and TRA that import taxes for 329 containers

whose particulars appear in the disputed 105 release orders, Exh. P5.

As already presented hereinbefore, the defence denied all the forgery charges in count no. 2 to 106, and sought the Court to find that the prosecution has failed to prove the case against the 1st and 2nd accused persons. The defence contended that the prosecution evidence failed to prove essential elements of forgery as established by law and case law. The case of ***DPP vs. Shida Manyama @ Selemani Mabuba*** (supra) was cited, which sought to establish forgery elements and the defence argument is that the Court should be guided by the holdings in the said case when assessing whether the case against the 1st and 2nd accused persons have been proved. The first element being whether the documents were authored by the accused persons and second, whether the disputed document was a false document. The third element being whether, it is the accused persons who forged the disputed document with intent to defraud or deceive.

With regard to allegations by prosecution witnesses that the 1st accused person signed the disputed release orders and gate out passes himself without passing this to the Delivery Manager (PW2), who was also required to be part of the process for the second signature, the defence argued that according to PW1 testimony when he was cross-examined, he stated that one Manager (such as the 1st accused person) may sign the documents on his own or on behalf of the Delivery Manager. That this assertion is supported by PW1

statement to the Police admitted as Exh. D1. That there is also the evidence of PW4 that after preparation of the Loading Order, the same was taken to the Security and Operation Manager (1st accused) and that he was the one to send files for approval. That PW4 also stated gate out passes are approved by the Operation Manager or Delivery Manager or both. That PW4 admitted to have dealt with files relating to Regional Cargo Services and that at least 106 loading orders were prepared and all dues relating to the said files were paid.

Therefore the defence argument being that, although the 1st accused person denies signing the disputed release orders, in the alternative if the Court finds that they did sign the release orders, loading orders and gate out passes, he did sign as the Operation Manager, a function he was mandated to do so and thus the release orders, loading orders and gate out passes are genuine. That there is no evidence brought in Court to show the disputed documents are forged documents and if so, that they were forged by the 1st accused person.

The defence also challenged the prosecution evidence especially PW1, PW2, PW3, PW4 and PW7 testimonies brought to prove forgery charges against the 1st and 2nd accused person and Exh. P5- the handwriting expert report. The defence argument being that the handwriting expert report failed to prove forgery charges as against the 1st and 2nd accused persons. The defence also contended that there was inconsistency in the evidence of the prosecution witnesses brought to prove the issue under consideration.

That there is no clarity on whether the files were found with and retrieved upon directions or guidance from the 1st accused who is alleged to have hidden the 106 files. That there is evidence from PW3 especially her statement admitted as Exh. D2, that she had been directed by PW2 not to record cargo cleared by Regional Cargo Services. That there was evidence that while in the office on the fateful day, PW1 threatened the 1st accused person with a pistol when questioning him about the missing files related to the disputed containers. That the Court should reject the evidence of the said witnesses being unreliable. The defence argued further that the prosecution evidence failed to bring clarity on how the files, (Exh.P1) were found. And where they were found and even the exact number of the alleged filed is not clear, because there are witnesses who stated it was 106 and some who stated they were 116 files found. That even the number of lost containers is not clear, that there are witnesses who state having knowledge of 8 containers and others who stated 105 containers and others stating 116.

The defence also challenged the chain of custody of the said files, stating it was not intact. That the evidence in the Court does not bring clarity to how the purported missing files (Exh. P1) found their way to PW1, who then tendered them in Court as exhibits. That there was no clarity on where PW4 retrieved the files from up to the time they were tendered in Court. Therefore the defence prayed the evidence on the files be rejected. The defence also prayed that the evidence of the handwriting expert and analysis report, that is, Exh. P5 and of PW7 be rejected, saying that they do not have evidential

value. That though the release orders were said to be attached to his report they were tendered separately and thus they argued they are not part of Exh.P5 and no explanation as to why they were separated was given, since it was stated by PW7 that they were part of his report.

The defence also contended that there was failure by the prosecution to adhere to investigation principles requiring that there must keep chronological documentation of paper trail showing movement of their intended evidence. The case of ***Makoye Samwel @Kashindje and 4 Others vs. Republic***, Criminal Appeal No. 32 of 2014 (unreported) was referred to fortify the position of the law on this. The other issue was the defence assertion that from PW7 evidence, the purported documents for examination were received on 16th of February 2016, though according to photographic enlargement which are part of Exh. P5, examination of the disputed documents was done on the 7th of February 2016, which is 9 days prior to the date the documents were received and that no proper explanation was provided to address this discrepancy. Therefore the defence contended PW7 evidence and Exh. P4 and P5, should be found unreliable or not credible and thus be disregarded by the Court, and thus not accorded any weight.

The defence also submitted for the Court to be guided by established principles governing weight to be accorded to expert opinion evidence. The case of ***DPP vs. Shida Manyama @ Selemani Mabuba*** (supra) was cited, where the Court discussed essential

characteristics of handwriting expert evidence and value. Thus arguing the Court to find that the evidence of PW7 and Exh. P5 and P4, have failed the test as presented in ***DPP vs. Shida Manyama @ Selemani Mabuba*** (supra). The same that the evidence of PW27 and Exh. P28 should also be rejected also for lacking evidential value.

The defence thus contended that the prosecution failed to prove that there were any false documents made with intent to defraud and linked to the 1st and 2nd accused persons, an essential component in proving forgery charges. That the role of the prosecution in this case was to prove that the 1st and 2nd accused persons forged the disputed release orders, and that the same purported to be what they are not, that is, release orders, loading orders and gate out passes. That from the evidence in Court it is not disputed that the alleged forged documents came to the hands of the 1st accused person from various departments, Azam ICD, Customs for him to approve release of containers. But that there has been no evidence to show that the 1st accused is the author of the documents in dispute only stating that there was his signature, for which the defence argued cannot by its own amount to forgery.

The defence for the 2nd accused was also to support the contentions by the 1st accused person and to state that the prosecution failed to prove a case against him. The 2nd accused prayed for the Court to find most of the prosecution witnesses unreliable in view of obvious discrepancies in their testimonies. That taking all evidence in consideration, in the charges of forgery, it

seems the prosecution reliance was on the testimony of PW7 to prove the charges under consideration, but that the discrepancy in the dates on receiving the sample and analysis should be considered in favour of the accused persons. The counsel for the 2nd accused person further argued that where photographic enlargements showed they were taken on 7/2/2016, while it was also testified that the documents were received on the 16/2/2016, therefore in considering this evidence regard should be on the provision of the law, that is section 47(a) and 48 of the Law of Evidence Act, Cap 6 RE 2002. Thus they contended that the forgery charges against the 2nd accused person as contained in count no. 2 to 106, have not been proved beyond reasonable doubt as required by the law, and prayed that the charges should be dismissed and the 2nd accused person found not guilty and be acquitted.

Having presented the case for the prosecution and the defence, in the evidence brought before the Court and submissions by the respective counsels, we now move for consideration and determination relating to charges of forgery against the 1st and 2nd accused person. In undertaking this task, understanding the elements of the offence of forgery is important. The offence and the charges of forgery are as outlined under section 333 of the Penal Code, Cap 16 RE 2002, and as established by the law and case law, the charges have three main components. First, it must be proved that the disputed document is false. Second, that the said false document was falsified with intent to defraud or to deceive; and third, being that the accused person is the one who falsified the disputed

document or is a party to it in terms of section 22 or 23 of the Penal Code Cap 16 RE 2002. Pursuant to section 335 of the Penal Code, there are various ways defined where a person can be said to make a false document, outlined in paragraphs (a)(b)(c) and (d).

The charges facing the 1st and 2nd accused person in Count 2 to 106 have specified paragraphs (a) and (d)(i) of section 335 of the Penal Code, to be the relevant paragraphs. Section 335(a) states that "*any person makes a false document who makes a document which is false or which he has reason to believe to be untrue*" and vide paragraph (d)(i) "*signs a document in the name of any person without his authority, whether such name is or is not the same as that of the person signing*".

There is no doubt that the law and case law have clearly expounded ways of proving forgery. There is first, direct evidence, where a witness who signed or signed the disputed document or a person by whom the document ought to have been signed or written is called to testify. Second, by calling as a witness a person in whose presence the disputed document was written or signed. Third, by calling an expert, that is, a document examiner to give his opinion, and this is provided by section 47 of the Evidence Act, Cap 6 RE 2002. Fourth, having testimony of a witness acquainted with the handwriting of a person by whom the disputed document is alleged to have been written or signed alluded to in section 49 of Evidence Act. Fifth, taking time to compare in Court the disputed and undisputed documents as propounded in section 75 of the Evidence

Act. Sixth, through a confession or admission of a person against whom the document is tendered. Seventh, by the evidence accorded by the contents of the document and eighth, through circumstantial evidence where it irresistibly leads to no other conclusion but that the disputed document must have been written or signed by the accused person or somebody instructed by the accused person. This last assertion can be discerned from the position stated in **Sarkar's Law** of Evidence, 2008, 16th Edition at pg. 1060 and 1250 as submitted by the counsel for the prosecution in their final submissions.

I find it pertinent to now present the facts which this Court discerned not to be in dispute between the parties. The undisputed facts have been drawn from the Preliminary Hearing stage, and scrutiny of the evidence before the Court. First, the names of the accused persons as they appear in the charge sheet are not disputed. The 1st accused person Raymond Adolf Louis was employed by Azam ICD between 2008 and March 2016 and was arrested on the 29th November 2015. At the time of his arrest he was the Operation and Security Manger, a position he held as of 2010. The 2nd Accused person Khalid Yusuph Hassan was an employee of Said Bakhresa Azam ICD from 2009 to July 2017 as a Port Operation Manager, and arrested in March 2016. The 3rd Accused person Harun Lyson Mpande was employed by Tanzania Revenue Authority (TRA) and was arrested on the 27th November 2015. The 4th accused person Khamis Ally Omar was also employed by TRA in the ICT Department and arrested 29th November 2015. The 5th accused person is named

Benson Vitalis Malembo who was arrested on the 22nd of January 2016.

After presentation of the evidence and arguments from the Prosecution and the defence sides with respect to charges against the 1st and 2nd accused persons under discussion, taking all what we have stated herein above, in determination of charges under consideration, to prove the charges of forgery against the 1st and 2nd accused persons satisfactorily, I am of the view that the prosecution had a duty to prove the following:-

(i) Whether the disputed 105 Release Orders were either authored, signed or authorised by the 1st and 2nd accused persons and are false;

(ii) Whether the 1st and 2nd accused persons had forged the disputed release orders and gate passes with intent to defraud or deceive.

(iii) The chain of custody of the relevant exhibits including hardcopy files for the disputed containers and release orders was not broken from the time of seizure to the time they were tendered in Court.

(iv) Whether the prosecution have proved the charges of forgery stated in count no. 2 to 106 against the 1st and 2nd accused person beyond reasonable doubt.

Starting with the first issue for consideration, that is, whether the disputed 105 Release Orders were authored, signed or authorized by the 1st and 2nd accused person are false. In considering this issue, I find that it is pertinent to understand what are release orders? What

are their function in the removal of cargo, and in this case the 329 containers? This is because all the charges in count 2 to 106 narrate forgery of various release orders whose numbers are specified therein, alleged to have been effected by the accused persons. The aim is also to understand whilst in brief the process of removal of containers from an ICD. PW1, Ashraf Yusuf Hassan Khan, the General Manager of Said Bakhresa Azam ICD testified that removal of cargo from ICD are governed by the Operating Procedures grounded on the Customs Act. That when Cargo is removed from the Port and stored at an ICD, the process is initiated by a clearing and forwarding agent. To facilitate this process various documents are essential. That the said documents include the shipping line delivery order, the D and DO from the Tanzania Port Authority (TPA) showing that the cargo has not debt (pending dues) from TPA and a custom release order showing that all custom dues have been paid. This fact was also testified by PW2,

That upon receiving the delivery order from a shipping line at the ICD, a file is opened. There is a software of cargo where the information from the delivery order is entered. That the original delivery order is brought to the ICD by clients through the Cleraing and Forwarding Agents (CFAs). That by the time it is brought the ICD would have already received a copy of the delivery order from a shipping line. That the role of the ICD is to verify authenticity of the copy and the original delivery order. That before the Clearing Agent arrives at the ICD, there is a process they have to undergo with the Customs Department, a process which is done on line. That the ICD

also receives directives from the Custom System called TANCIS, which is an integrated system for custom dues on cargo. That the Clearing agent upon arrival at the ICD he must come with custom verification of the cargo has entered in the process of verification, and instructions for the cargo to be inspected by customs. For cargo which does not require custom inspection, the clearing agent comes with customs Release Orders. The ICD have authority or access to enter TANCIS so as to investigate the customs order from a Customs Officer situated at ICD with a document with his signature. That the document is recovered by the delivery manager. That the third document emanates from TPA with other documents directing that TPA has approved removal/delivery of the cargo or containers. That all the three documents must be verified to initiate process of payment at ICD, also stated by PW2. Therefore from this evidence there is no doubt that a release order is an important document in the process of removal of cargo from dry Port.

On whether the disputed 105 Release Orders were either authored, signed or authorised by the 1st and 2nd accused persons, the defence have stated that the prosecution has failed to bring in any credible evidence to show that the 1st and 2nd accused person signed on, authored or authorized the disputed release orders. The issue under consideration arises from the contents of Section 335 paragraph (d)(i) stating that where a person *signs a document in the name of any person without his authority, whether such name is or is not the same as that of the person signing* can be said to have committed forgery. This Court is aware that there are various ways

one can prove this. Having gone through the evidence before the Court, the prosecution ventured to prove this.

There is no dispute that at the time of the alleged forgery was occasioned, the 1st accused person was the Operations, Safety and Security Manager at Azam ICD. That in view of this position, accused No. 1 had access to the TRA Computer system, that is, TANCIS from the evidence of PW1, PW2 and even the accused person himself in his testimony. In his testimony 1st accused stated that his duties involved supervising all operations related to transportation of containers from the Port to Azam ICD and to supervise security and safety of containers/cargo to Azam ICD and was also incharge of and supervised removal of containers from Azam ICD.

The 1st accused person stated that the removal of the cargo from Azam ICD is a process. For cargo requiring inspection, Azam ICD receives Release Orders coming from TRA and handed to a client. The client attaches the release orders with other relevant documents for Azam ICD to initiate process of removal of cargo. That the release order must be accompanied by a delivery order issued by a shipping line, who at the same time send a copy the ICD to enable the ICD to make a comparison with the one brought by client. That Azam ICD verifies the Release order. That physically it has to have a stamp and authorization of the officer Incharge of TRA at Azam ICD. That; *"after that, we check in the TANCIS system to check whether the Release order is in the TANCIS system. After that the release order is authorized for removal of cargo from Azam ICD"*. The 1st accused also

testified that the release order, DNDO and delivery order are received by the Delivery department at Azam ICD. This testimony on release orders receipt and verification is similar to what PW1, PW2, PW4 stated.

From the forgery charges under scrutiny, the alleged forgery occurred between the 11th day of July and 28th of October 2015, when the 329 disputed containers are alleged to have been removed un-procedurally from Azam ICD. PW2 who was the Delivery Manager of Azam at the time, testified that between July and December 2015, he never dealt with any cargo related to Regional Cargo Services. PW2 also testified, that from the end of June 2015 to August 2015 he was not in his office, having gone to vie for a political post during preliminary CCM Party internal elections.

PW2 testified that he had worked with the 1st accused for a long time, identified the signature of the 1st accused person in Exh.P1(i) a gate out pass, and those of the 2nd accused person in 105 release orders which were at the time of his testimony admitted and marked Exh.ID-1 (as it was then) that facilitated removal of one container. PW1 also identified the signature of the 1st accused person in gate out passes that is, Exh. P1(i) and contents of Exh.ID-1 and stated that, he managed to identify the 1st accused signature having worked with him for a long time. This evidence is for purpose of showing that the contents of Exh. P5, the release orders displayed the signature of the 1st and 2nd accused persons, which should not have been the case.

From what has come out, from PW5 and PW10, the release Orders were supposed to be signed by them and they denied having signed or endorsed the disputed Release Orders nor in anyway attending to them or any cargo cleared by Regional Cargo Services during the period under scrutiny. PW5 was the one who tendered the release orders registers/dispatch books admitted as Exh. P2. Which in fact leads for one to draw an inference that the disputed Release orders did not originate from TRA. That the said Release orders were never registered in Exh.P2 which contained all particulars of release orders dispatched to TPA and Azam ICD to facilitate release process of the relevant containers.

There is also the testimony of Kalunde Suleiman Kisesa (PW9) who compared the doubted release orders and the original release orders in the TANCIS, whose TANSAD numbers were different and thus concluded that they were forged. This put together with her report with analysis admitted and marked Exh. P6. PW9 findings arose from the fact that she discerned various discrepancies which are recorded in her report. For instance, she found there is error in the name of customs office. Whilst the alleged forged release orders read "DAR COSTOMS SERVICE CENTRE" instead of the actual name; that is "DAR CUSTOMS SERVICE CENTRE. There is the manifest numbers used in the disputed release orders which according to her testimony, were not arranged properly. There is also the fact that some of the disputed release orders did use TANSAD numbers of release orders. that had been previously used to clear cargo in other customs controlled areas like Namanga, Kabanga,

Rusumo, Tunduma, Mutukula, Tanga, JNIA, Kasumulo, Horohoro, Tarakea, Holili and Mwanaa Airport. This fact was testified by various witnesses such as, PW13, PW18, PW19, PW20, PW 21, PW22, PW23, PW24, PW25, PW26 and PW27 who presented discrepancies in the genuine release order numbers to those which were alleged to be forged.

There was also the evidence by the prosecution showing that the disputed release orders divulged wrong digits numbers of the year on which the documents were issued. A valid TANSAD number issued in 2015 had two digits only, "-15". TANSAD number in the disputed release orders displayed eight digits while the system allows only seven digits. Three TANSADs were used more than one time while in practice one TANSAD number is used once for one bill of lading. The disputed release orders exhibited the name of Regional Cargo Services as clearing agent. Tiagi Masamaki (PW28), tendered customs agency licence revocation letter marked Exh. P.20, to prove that Regional Cargo Service had no capacity to operate at any customs controlled area because their licence was revoked since 12/10/2013.

There was also evidence from the prosecution, on the fact that there being the name Regional Cargo Services Ltd, the clearing agents who supposedly cleared the disputed containers, in the disputed release orders as another proof offered by the documents themselves. That this shows they are false since Regional Cargo Services Ltd was not a clearing agent and therefore did not exist in 2015 having been stopped upon revocation of its licence in 2013 as shown by Exh. P20.

With regard to the evidence by PW7, a gazetted handwriting expert on his analysis of the handwritings found in the disputed release orders in Ex.P5 which he claimed were part of his analytical report. We are alive to the guidance provided by the Court of Appeal on how courts should deal where there is dispute in handwritings in documents.

Handwriting expert opinion in evidence is governed by Section 47, 49 and 75 of the Evidence Act, Cap 6 Cap 2002 (Evidence Act). As held in the case of ***DPP vs Shida Manyama @ Seleman Mabuba*** (supra). The Court of Appeal held:

"Generally, handwriting or signatures may be proved on admission by the writer or by the evidence of a witness or witnesses in whose presence the document was written or signed. This is what can be conveniently called direct evidence which offers the best means of proof. With such evidence, the prosecution need not waste its resources on the other methods. More often than not, such direct evidence has not always been readily available. To fill in the lacuna, the Evidence Act provides three additional types of evidence or modes of proof. These are opinions of handwriting experts (s. 47) and evidence of persons who are familiar with the writing of a person who is said to have written a particular writing (s. 49). The third mode of proof under s. 75 which, unfortunately, is rarely employed these says, is comparison by the court with a writing made in the presence of the court or admitted or proved to be the writing or signature of the person".

At the same time the Court of Appeal explicated on the weight to be accorded to handwriting expert analytical reports on disputed handwritings. They stated: "*we are alive to the universally recognised fact that Handwriting Forensics is a science involving scientific examination of disputed documents, and not cursory observations or opinions based on guess-work*".

The Court of appeal went on to narrate the contents of the handwriting expert in the said case, which we have to say is almost similar to the report contained in Exh. P5 and what is titled "*Taarifa ya Uchunguzi wa Maandishi*", and it makes reference to a letter from the ZCO dated 2/2/2016. The report is dated 7/03/2016. In the report the Document Examination Report, states that on the 16th of February 2016, PW7 received a sealed packet from D/SSGT Chuchi (PW14) having been sent from ZCO Dar es Salaam. That he did receive various Exhibits labelled A1-A143 to S1-S9 and expounding the contents of each exhibit.

PW7 analysis expounds how he examined and compared the disputed rubberstamps marks on and specimen rubberstamp on relevant exhibits. The report (Exh. P5) reveals the modality used being modern scientific equipment especially the video Spectral Comparator (VSC 6000) and his discovery and opinion. For the disputed handwritings, the report shows how his analysis was through the use of VSC 6000 and the findings. At the last paragraphs of the report it states that the photographic enlargements showing specific similarities and differences are attached for reference. The

photographic enlargements were part of Exh. P5 and thus available to the Court, and we find the contents of the report is distinguishable from the report in the case of ***DPP vs Shida Manyama @ Seleman Mabuba*** (supra) and that it augurs well with the holding in the above mentioned case which cited with approval the decision in as stated by Lord President Cooper in **Davie v. Edinburgh Magistrates**, 1953 S.C. 34 at page 40, the duty of such experts is:-

"to furnish the court with the necessary scientific criteria for testing the accuracy of their conclusion so as to enable the court to form its own independent judgment by the application of these criteria to the facts proven in evidence."

In the case under scrutiny, this Court had an opportunity to examine the evidence pertaining to Exh.P5 with regard to the signatures in the release orders purporting to belong to 1st accused person, and found no reason to depart from the opinion of PW7 and also the findings that it is 2nd accused person who wrote the word proceed in the gate out passes.

I have also considered the defence by the 1st and 2nd accused person, on the alleged inconsistencies in the dates of receipt of the exhibits and the date in the photographic enlargements and my perusals found that most of them show they were taken between the 7/2/2016-7/03/2016. My perusal of the photographic enlargements I did not see the one dated 5/2/2016 as alleged by the defence counsels, a date before PW7 was handed the exhibits. I saw some dated 5/3/2016, so it was not clear to this Court, where the assertion

of photographic enlargements with a date prior to the handing over to PW7 came from. But even if that was the case, I watched PW7 testimony and he was very adamant and clear on this issue, stating that there was nothing like this, and that he had not done any analysis before the date he was handed the samples and that if this is what is seen in the enlargements, then it could be a problem originating from the machine used to conduct the analysis.

The Court has also addressed the argument that the analysis of the handwriting does not comply with the holdings in ***DPP vs Shida Manyama @ Seleman Mabuba*** (supra), this Court has already discussed this and finds that, the report complied with the guidance in that case on weight to be accorded to handwriting expert opinion. It should also be borne in mind that in determining this issue, consideration was also made on other factors, that there were witnesses for the prosecution conversant with the handwritings of 1st and 2nd accused who testified that the signatures in the 105 release orders was that of the 1st accused person and the wordings in the gate out pass linked to the release orders and removal of the 329 missing containers was that of the 2nd accused person.

Therefore, on the first part of the first issue, taking into consideration the evidence presented by the prosecution, and having considered the defence raised by the defence we find that there is no doubt that the disputed 105 release orders were signed by the 1st accused person and also the 2nd accused person.

Moving to the second part of the first issue under consideration, whether the release orders are false documents, there is evidence that the Operations, Safety and Security Manager at Azam ICD had access to TANCIS and was responsible for verifying the authenticity of the release orders submitted to him by clearing agents. It is also in the testimony of prosecution witnesses (already mentioned above) that the 1st accused person was responsible to ensure the authenticity of the release orders this by crosschecking with the Government revenue payments information available in TANCIS before endorsing release orders and issuing loading orders and gate passes. The accused himself in his testimony conceded to have access to the TANCIS for viewing. This statement augurs well with the evidence of PW1 and PW2 evidence on the role of ICDs to verify authenticity of documents from TRA. 1st accused also conceded to have taken some of the duties of PW2 during the time between July to August 2015, when PW2 was absent from work.

Thus the 1st accused person failure to verify authenticity of the relevant documents as required, before authorizing removal of cargo, and by proceeding to allow removal of the respective containers in the absence of TRA officials, and failure to record in the TANCIS that the containers were cleared for removal by the clearing agent is another black mark against him. From the evidence of PW1 and PW2 also the Manager responsible for verification of all these documents is the Delivery Manager, that in the absence of the Delivery Manager he may delegate so as not to delay any process. That usually this was delegated to his subordinates, if he was out for some time. With

respect to the gate out passes, this is prepared with details of cargo to be removed and this initiated from CAPELA system, according to PW1, PW2 and PW4. That the gate out pass is to be signed by two managers. The documentation part the delivery manager and then the 2nd on operation it is signed by the Operation and Security Manager who was the 1st accused person.

Section 335 of the Penal Code sets out a number of means by which a person can make a false document. Having found that the disputed release orders and gate out passes were signed and authorized by the 1st and 2nd accused respectively, the provision provide for the need of *menrea.* Knowledge that the signing of the release orders knowing that was unprocedural and approving the gate out so that the process proceed knowing the same was not the procedure. Therefore, I find that the prosecution have managed to prove that the release orders in dispute were made by the 1st and 2nd accused persons, and that they were false. There is enough evidence as expounded hereinabove that the respective release orders expounded in count no. 2 to 106 purporting to be issued lawfully through known TRA processes while this was not the case. Therefore the answer to the 1st issue is in the affirmative. That the 1st and 2nd accused person did knowingly did sign and authorize the disputed release order which were false.

On whether the 1st and 2nd accused persons did forge the release orders and gate passes with intent to defraud. The evidence expounded when analyzing evidence for issue number one, is also

relevant for this issue. The fact that Regional Cargo Services Limited was used, a clearing and forwarding agent whose licence had been revoked for more than one year shows intent to defraud. The contention by the 1st accused that he was not aware that Regional Cargo Service Ltd operating licence has been revoked appears to be lie. This is because, having regard to the fact that Azam ICD is a company which deals with import and exportation of cargo and therefore dealt with clearing agents. There is no question that prior to revocation of licence Azam ICD had dealt with Regional Cargo Services, the evidence of PW2 supports this. The argument by 1st accused that they can only view TANCIS and that PW29 Tiagi Masamaki had stated that they might not have informed ICDs on revocation of Regional Cargo Services, is not enough to show lack of knowledge of Regional Cargo Services licence revocation to an Operation and Security officer of an ICD where a company, who was a client, licence has been revoked for more than one year, where other staff members also acknowledge that the ICD had been dealing with Regional Cargo Services.

There is also the evidence of Pw9 who compared the doubted release orders and the real or original release orders part of Exh. P5 and concluded that those in Exh. P5 were false. This is shown in Exh. P6, the report with analysis which shows how PW9 arrived at this conclusion. The report has not been challenged in anyway in terms of content and analysis.

The 1st accused person whose signature was found in the disputed release orders as stated by the handwriting expert, and also PW1 and PW2 who identified 1st accused's signature in the release orders, must have known that the release orders were false, that is not authentic, since as also acknowledged by the 1st accused in his testimony, one had to verify authenticity of the said documents before proceeding with any further action in TANCIS. Therefore if he signed forged documents his knowledge that they were not authentic documents is not in doubt. There is also the evidence of PW3, that she was told by the 1st accused person not to record in the daily report any containers cleared by Regional Cargo Services. Therefore it is clear the 1st accused person was aware of the falsity of the release orders and thus signing them and the gate passes without doubt was with intent to deceive or defraud.

The 2nd accused person in writing TPA please proceed in a document, which he knew was for clearance of Cargo, with a company which was authorized to operate, shows that he knew what he was doing and that the false documents were issued with intent to deceive or defraud. It is clear that the removal of the 329 containers was a coordinated activity, with concerted effort. From how the 1st and 2nd accused persons actions they are both principle offenders and at the same time from the evidence, the offence intended to be committed is the one which in effect was committed, therefore there is no need to apply the principle of common intention within the confines of section 22 (a)(b) or 23 of the Penal Code, Cap 16 RE 2002. It suffices to say that from the evidence before the Court,

the Court finds that, the 1st and 2nd accused persons, did make false documents and that the prosecution have proved this fact beyond reasonable doubt.

With regard to the alleged confession of the 1st accused made to PW1, though it is true as argued by the prosecution, that a confession can be oral vide section 3(1)(a)(b)(c) and (d) of the Evidence Act, we find from the evidence in Court, where the evidence from the defence that a firearm was in view before the said alleged admission. Also with the understanding as pronounced by the Court of Appeal, having synthesized the definition from Blacks dictionary, in Criminal Appeal No. 358 pf 2013, ***DPP vs. ACP Abdallah Zombe and 8 others,*** that, "*So, in this context a confession is a voluntary admission of guilt to an offence*". The Court also imported the holding in In **Anyangu and Others V R** (1968) EA. 239 of the defunct Court of Appeal for East Africa Observed:-

"A statement is not a confession unless it is sufficient by itself to justify the conviction of the person making it of the offence with which he is tried".

Looking at what it is said the 1st accused admitted in the presence of PW1 and PW2, I do not feel this so called confession meets the standard set to be a confession, but from the evidence of PW1, PW2 and PW3 and PW4, the 1st accused person admitted that he had the files at his house and from the evidence of PW4, they went to the area of the 1st accused house and were handed by the brother to the 1st accused person. That being the evidence, we find the

evidence on this issue not in doubt since the files were retrieved. This evidence further strengthens the evidence of the 1st accused person. But despite this, I find the other evidence as narrated above enough to prove that the 1st accused and second persons from their actions signed false documents with intent to deceive or defraud.

The evidence augurs well with the evidence that the 1st accused account was credited with Funds from XL Company Ltd, a sister company to Regional Cargo Services owned by one person Abdikadir Kassim. The denial by the 1st accused of the CRDB account was just a way to defend himself, having regard to the evidence of PW31 and PW32 and Exh 29 and 30 that strengthens the prosecution assertions. One would have expected the 1st accused to give an explanation on the said funds being credited to his account. Though the 1st accused denied having an account at CRDB and argued that the account according to Exh. P.30 was in the name Raymond Gradious Louis, a student at NBAA Mhasibu house and therefore stated it was not his, the 1st accused person acknowledged to be employeed by Said Bakhresa company and in the said exhibits, there are various entries from Bakhressa including salaries as can be seen on a transaction dated 28th April 2014 and 27th May 2014, SSB Salary, as we had been informed by various witnesses especially PW1 and PW2, that SSB being Said Salim Bakhresa. There is also on 2nd November 2015, a transaction from XL Clearing nad Forwarding Ltd/Regional Cargo of Tshs. 95,440,000.00 as also testified by PW31 with regard to transactions by XL Clearing and Forwarding Amana Bank. And also on 12th November 2015, a transaction from the same

source of Tshs. 100,000,000/-. The said dates also corresponds to the dates in the charges where the offence is alleged to have been committed. From this evidence we are convinced that Raymond Adolf Louis is one and the same person as Raymond G. Louis and thus the CRDB account whose statement is expounded in Exh. P.30

The third issue, relates to chain of custody, whether or not it is intact with regard to the documents especially the files alleged to have been retrieved from the 1st accused persons home. In the case of **Paul Maduka** (supra), the Court of Appeal held:

"By "chain of custody" we have in mind the chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis, and disposition of evidence, be it physical or electronic. The idea behind recording the chain of custody, it is stressed, is to establish that the alleged evidence is in fact related to the alleged crime – rather than, for instance, having been planted fraudulently to make someone appear guilty. ...The chain of custody requires that from the moment the evidence is collected, its every transfer from one person to another must be documented and that it be provable that nobody else could have accessed it".

The challenge in this case being upon seizure of the files, why it was PW1 who tendered the said files. That this was an abrogation of the principle of chain of custody. Pw1 evidence was that upon the concerned filed being seized, they were taken by the Police and he had not seen them again until he was handed by the Prosecutor prior to testifying in Court. The principles governing chain of custody for

handling exhibits have been expounded in various cases. The Court is also aware of a chain of precedents of the Court of Appeal that the exhibits must not only be properly handled, but each such stage of custody through which they pass must be shown and tendered in Court. In Criminal Appeal No. 348 of 2015, **Zainab Nassor@ Zena vs. The Republic** and Criminal Appeal No. 28 of 2010, **Abuhi Omari Abdallah and others vs. Republic**.

Whilst the above has been set out in various case, at the same time we are guided by the holding in the case **of Charo Saidi Kimilu and Mbwana Rua Kubo vs Republic**, Criminal Appeal No. 111 of 2015 pronounced on the 16th of September 2015 at pg. 17, where the Court of Appeal stated that chain of custody may be proved by oral evidence stating:

"*We are also of a considered view that, the chain of custody was not broken from the time of arrest to testing by the Chief Government Chemist and tendering in the trial Court relying on the evidence of PW2, PW3, PW4 and PW4*".

I find the above holding has expanded on previous holding of ensuring that chain of custody is not broken by holding the oral evidence of witness is enough to prove handling of exhibit. In this case PW4 and PW2 testified on how the said files related to containers were retrieved. PW1 expounded on how the files were handed to the Police until the time he was given in Court to tender. No investigator was cross examined to the extent of revealing any need to be concerned on this, PW stated the files were stored at the Police in their exhibit room. PW1 stated that some of the files had some

missing documents. With the evidence in Court on this issue, we find no doubt on the sanctity of the chain of custody of the 106 files in question, an issue raised by the defence. Thus, I am of the view that no chain of custody was broken to lead to prejudicing the rights of the accused persons and thus warrant interference by this Court.

The issue of tendering the said evidence in Court by PW1, it should be understood that this was decided by the Court on the 19/2/2018, where PW1 was found to be competent to tender the 105 files and they were admitted as Exh. P1. This Court will not further dwell on this issue, having found that PW1 was competent to tender the said files, for reasons stated in the said Rulings. We have considered the evidence of the Prosecution and defence on this issue and find that while it is true that the prosecution witnesses did not tender any documentary evidence to show stages of handling that in itself alone does not infer that chain of custody was broken. It remained intact.

Therefore, taking all the above factor in consideration we find that the prosecution has proved the charges of forgery stated in count no. 2 to 106 against the 1st and 2nd accused persons beyond reasonable doubt.

At this juncture, the Court moves for consideration and determination against the charges in count no. 1 facing the 3rd accused person, Harun Lyson Mpande, who is charged with Illegal Computer Data Deletion contrary to section 7(1)(b) of the Cyber Crimes Act, 2015. The particulars of the offence being that the 3rd

accused person on diverse dates between 11th July and 28th October 2015 in Dar es Salaam, intentionally and unlawfully deleted computer data from TANCIS database by deleting manifest information regarding 329 imported containers destined to Azam ICD Sokota from TANCIS database. On the part of the prosecution, the evidence presented in Court was based on proving three elements of the offence.

In consideration and determination of the charges in this count, three issues that relate to the elements of the offence will be considered and determined. First, whether there was deletion of computer data. Second, if the answer to issue one is in the affirmative, whether the alleged deletion was done intentionally and unlawfully without authorization. The third issue is whether the alleged deletion of data was done by the accused person. While considering each issue, consideration of the defence shall be done and also the fact that it is the prosecution which have to prove their case beyond reasonable doubt as required by law.

We start with the first issue, and for the prosecution the evidence before the Court on this issue relies on the testimonies of PW1, PW2, PW5, PW9 and PW28 who had stated that there was no information in TANCIS system regarding 329 containers which were supposed to have been received at Azam ICD. That the information on the said containers was deleted without authorization which would have come from Tiagi Masamaki Kibisi (PW28) who was at the time the Commissioner For Customs. For the prosecution, the argued

that with the evidence available there is no doubt that whoever deleted the information did it intentionally and fraudulently to aid illegally clearance of the 329 containers from Azam ICD.

For the prosecution the above being the fact, the question for determination was whether it is the 3rd accused person who deleted the said information from TANCIS. For the prosecution the evidence of PW12 and Exh. P7 and Exh. P2 provides the answer to this. They argued that from the evidence of PW12, the computer used to delete the relevant information from the TANCIS system on the removal of 329 containers was allocated to the 3rd accused person according to the computer allocation manifest. That there is evidence that the 3rd accused person was hired in February 2014 and not in March 2013 as presented in the 3rd accused defence and the sought the Court to find Exh. D5 supporting this assertion because in the said statement there is a reference that he was hired in February 2014. That that is why the 3rd accused avoided to tender the appointment letter knowing it will dispute his assertion that he was recruited in March 2014. Thus the prosecution prayer was for the 3rd accused person to be found guilty as charged on this count.

On the part of the defence they challenged the evidence of PW9, the Manager systems maintenance and PW12, Liberatus Charles Mzobola the Manager Computer Forensic whose testimony was to show that the 3rd accused person deleted the information from TANCIS but argued that the two witnesses failed to prove that it is the third accused person who deleted the alleged information from

TANCIS related to the 328 containers. The defence contended that the evidence of PW29 supports the defence assertion on this issue since he showed that the computer alleged to have been allocated to the 3rd accused person was actually allocated to someone else, one Harun Kipande as vide Exh. P21. That the said Harun Kipande was never called as a witness to allude to the claims by the prosecution. The defence also sought the Court to also consider Exh. D5 which is a letter dated 17th March 2014, from TRA addressed to the 3rd accused person became a TRA employee on the 17th of March 2014 and therefore the allocation said to be to one Harun Kipande on the 1st of March 2014, does not in any way refer to the 3rd accused person. The defence therefore sought the Court to dismiss the charges against the 3rd accused person and find him not guilty.

Consideration has been made on the evidence before the Court on this Count. From the evidence of PW1, PW2, PW5 and PW9, all these witnesses testified on how all their efforts to trace information regarding alleged lost 329 computers proved futile. The fact that there was information deleted from the TANCIS system regarding the 329 containers has not been challenged by the defence. Therefore it is not an issue, and if the said information was deleted from the TRA TANCIS system without authorization of PW28, as per his testimony and that of PW12, then it is clear that the deletion of any information from the TANCIS relating to the 329 containers was intentional and unlawful. That being the case, the next issue is whether or not it is the 3rd accused person who is the culprit.

From the evidence, the Court has to determine whether the person said to be allocated a computer which Exh. P21 reveals that it was the one used to delete the relevant information is the 3rd accused person. Evidence before the Court shows that the alleged computer was allocated to one Harun Kipande. The prosecution did not bring any evidence to show that Harun Kipande is one and the same as the 3rd accused person whose name is Harun Lyson Mpande. While it is true both the first name is Harun, the second names are different. There was no prosecution witness to substantiate that the two are one and the same person. The evidence available leaves doubts on this issue, doubts which should favour the accused person. Even if for the sake of argument it was argued that it is one person, there is the evidence from the defence, fortified by Exh. D5 that the date when accused No. 3 started working at TRA was on the 17/3/2014, as an information and Technology officer. That his duties involved to work as a business analyst web developer. That he did not deal with the TANCIS system, but working in developing a new integrated system for East Africa with hired consultants. He stated he had limited awareness of TANCIS system but that he had no access to it.

Whilst we are aware of the prosecution contention that the 3rd accused person was hired before the day he specifies to have started work, we find no evidence brought by the prosecution to show the day the accused reported for work to contradict the evidence by the accused person. Therefore, we find there is no substantial evidence to lead this Court to find the 3rd accused to have intentionally and

unlawful deleted the computer data as charged. The only evidence available is that he was conversant with TANCIS system. We find the prosecution have failed to prove the charges against the 3rd accused person on the 1st count against the 3rd accused person. Therefore the charges are dismissed accordingly.

We now move to the counts related to Occasioning Loss to a specified authority contrary to paragraph 10(1) and (4) and sections 57(1) and 60(2) of the EOCCA, as expounded in count No. 107 and where the 1st , 2nd , 3rd, 4th and 5th accused persons. The particulars of the offence being that on diverse dates between 11th July 2015 and 28th October 2015 by their willful acts occasioned to the Tanzania Revenue Authority a loss of Twelve Billion, Six Hundred Eighteen Million, Nine Hundred Seventy Thousand and Two Hundred Twenty Nine Only (12, 618,970,229/-.

In consideration and determination of this count we will also deal with charges in count no. 110 facing the 1st, 2nd, 3rd, 4th and 5th accused persons and which is an alternative to count no. 107, that is, Aiding Tax Evasion contrary to section 80 of the Tax Administration Act, 2015. It is well established by law and Court decisions that to prove the offence of Occasioning Loss to a Specified Authority, there are three elements which have to be proved, with the understanding that the prosecution has the burden to prove beyond reasonable doubt. The three elements are first, the victim of the loss must be a specified authority as defined under section 2 of EOCCA Cap 200 RE 2002. Second, that a specified authority must have

suffered a pecuniary loss or damage to property it owns or possesses. Third, the loss of damage to property must be attributed to a willful act or omission of an accused person or his negligence, misconduct or failure to take reasonable care or discharge his duties in a reasonable manner. The offence of Aiding Tax evasion, has two elements. First, that there was tax to be paid and second that the accused person aided the evasion of the relevant tax under consideration.

On the part of the prosecution, with regard to the first element, they argued that the victim of the offence is the Tanzania Revenue Authority who without doubt falls under the definition of a specified authority. That, having regard to a finding in the charges of forgery that the 104 release orders used to clear containers from Azam ICD are false, then the Court in terms of section 122 of the Evidence Act should draw an inference that TRA lost revenue and suffered a pecuniary loss from the fraudulent clearance of disputed containers. That Exh. P5, Exh. P6 and Exh. P7 prove the quantum of the said loss suffered from the unlawful clearance of containers from Azam ICD. That the quantum of this loss has not been disputed. Prosecution further contended that Exh. P5, Exh. P6 and Exh. P7 prove that a sum of Tshs. 12,618,970,229.00 which was the import tax that was not paid to TRA after illegal clearance of 329 containers from Azam ICD, leading to TRA to suffer a pecuniary loss as shown at pg. 13 of Exh. P7, which sums up this loss incurred by TRA.

The Prosecution also addressed submissions by defence that the Republic did not call importers to prove the loss, and argued that any such failure to call them does not affect proof of loss of import taxes, because import taxes are paid by clearing agents who have access to TANCIS and not the importers as per section 147 of the East African Customs Management Act of 2004. That Accused No. 5, Benson Vitalis Malembo, is an accused person who was employed in one of the clearing agents companies and could not be called as a prosecution witness to prove loss of taxes he avoided to pay. That one of the primary suspects, Abdi Kassim, said to be the Managing Director of Regional Cargo Services is still at large and also could not be called to prove loss of import taxes he evaded to pay.

On the issue whether or not the accused persons willfully aided or took part in assisting the illegal clearance of the containers the prosecution side presented evidence on how each of the accused persons is involved. For the 1st and 2nd accused person, the prosecution contend that their involvement is from the fact they forged the release orders which aided the illegal clearance of the containers. That Exh. P5 implicates the two accused persons with forgery of the release orders that effected clearance of containers from Azam ICD without paying taxes and relevant dues. The prosecution also relied on a confession made by the 1st accused person to PW1 in the presence of PW2 and PW4, that he allowed the containers to be cleared because he was assured information have been deleted from TANCIS and also the fact he hid the physical files of the illegally cleared containers until when he was forced to produce them. There

is also evidence that 1st accused person told PW3 to omit information related to the illegally cleared containers, in the daily reports submitted to TRA.

With regard to the 3rd accused person, it was the prosecution contention that he is linked to the TANCIS system fraud leading to deleting of information related to clearance of 329 containers from the TANCIS system. For the 4th accused person, it is was contended that he linked the importers with PW16 Godfrey Masilamba and Abdulkadir Kassim of Regional Cargo Services a clearing service whose name was used to illegally clear the containers from Azam ICD, proved by evidence of PW16. For the prosecution, the 5th accused person involvement arises from the evidence of PW4 that the accused acted for Regional Cargo Services, to clear container from Azam ICD between October and November 2015. Also arguing that PW4 evidence is corroborated by the handwriting expert report in Exh. P5 which proves that accused No. 5 signed gate out passes in the name of John Joseph instead of the actual name in the gate passes so as to clear the containers from Azam ICD. With regard to the defence arguments, the counsel for prosecution submitted that the denials by the accused persons do not shed doubt on the prosecution evidence which has been proved by oral, documentary and circumstantial evidence.

On the part of the defence with regard to the charges of Occasioning Loss to a Specified Authority in Count No. 107, for the 1st accused person the counsel for the 1st accused, at first challenged

the charges and sought the Court to find the charges to be defective arguing that there was absence of essential particulars of the offence. From the submissions the counsel does not dispute what was raised by the prosecution as being the essential ingredients or elements to prove a charge of occasioning loss to a specified authority. The 1st accused counsel argued that the particulars of the offence charged do not reveal the ingredients sought in the charges. Therefore they contended that the charge is defective for lack of essential particulars or ingredients of the offence. That this situation contravenes section 132 of the Criminal Procedure Act, Cap 20 RE 2002. The case of ***Mhina Hamisi vs. Rep***, Criminal Appeal No. 83 of 2005, was cited on the need for a charge to disclose the nature of the offence. The other challenge was that the prosecution failed to substantiate charges of pecuniary loss suffered by a specified authority there being no tax assessment tendered nor any witness who testified on the same.

For the 2nd accused person, his defence on the charges was that, the prosecution failed to provide any cogent evidence to prove their case against the accused on this count. With respect to the 3rd accused person, his defence was a denial of any knowledge of any other accused person prior to being arrested except for the 4th accused person who he knew because they worked together at TRA. The third accused person highlighted not being involved in data deletion of information related to clearance of containers in TANCIS, nor was he allocated the computer alleged to have been used to delete the information. Therefore he argued, that the ingredients of the

offence under scrutiny have not been proved against the 3rd accused person.

For the 4th accused person on this issue, he contended that the Economic and Organized Crime Control Act, does not have a designated provision of section 10(1) & (4) and therefore argued the charge is defective. But proceeded to argue that if the Court was to find that this defect is curable, then it was their contention that the prosecution failed to prove their case beyond reasonable doubt. That from the evidence before the Court, it seems the culprit is Regional Cargo Services and not of the accused persons. That there was no proof of a guilty intent on the part of the 4th accused person on this charge under scrutiny and also that the ingredients of the offence have not been proved against the 4th accused person. That no prosecution witness who testified in any way on the involvement of the 4th accused person in the unlawful clearing of disputed containers under consideration.

On the part of the 5th accused person, it was their argument that the evidence before the Court, shows that 329 containers were cleared unlawfully. Claims against the 5th accused person being only that by using Regional Cargo Services title, he signed gate out passes using the name John Joseph to clear some containers from the 329 containers unlawfully cleared. But that there was no evidence on the actual numbers of the alleged containers cleared allegedly from the allegations that accused no. 5 forged the gate our passes for clearance. Arguing further that there was no evidence on that the

alleged disputed gate passes were used for the containers alleged to have been cleared unlawfully and no evidence to link the 5th accused person with any offence charged.

Having presented the case for the prosecution and defence for each accused person facing charges under count no. 107, the Court will determine whether the prosecution has proved their case beyond reasonable doubt for each of the accused persons. It suffices that there is no doubt that to prove the offence of occasioning loss to a specified authority as charged, the prosecution is required to prove the following: There must be a pecuniary loss to a specified authority; the accused must occasion the loss by a willful act and misconduct, omission, negligence or failure to exercise reasonable care or discharge his duties in a reasonable manner. We also find no need to take much time on this issue, this issue has not been controverted by either side, and therefore, it is found that that Tanzania Revenue Authority (TRA) is a specified Authority within the confines of section 2 of the EOCCA Cap 200 RE 2002.

Consequently, in determining the guilty or innocence of each of the accused person on the charges in count no. 107, having considered the prosecution and defence, the following issues shall guide deliberations by this Court. First, whether or not the charges are proper. Second whether TRA suffered a pecuniary loss or damage to property. Third, whether the accused persons are the ones who caused TRA to suffer a pecuniary loss by their willful acts, omission,

misconduct, negligence or failure to exercise their duties in a reasonable manner.

On the first issue on the charges, the statement of offence reads:

Occasioning Loss to a specified authority contrary to paragraph 10(1) and (4) and sections 57(1) and 60(2) of the Economic and Organized Crime Control Act, Cap 200 RE 2002.

While it is true that the charges are defective as argued by the counsel for the 4th accused person, in that, there is no paragraph 10(1) and (4) of the EOCCA, Cap 200 RE 2002, without relating this to the First Schedule, since the paragraphs outlining offences in the EOCCA, Cap 200 are enshrined in the First Schedule to the EOCCA, Cap 200. Thus not linking the cited paragraphs to the First Schedule is without doubt erroneous. This Court having heard submissions on this from the prosecution and defence, is aware of the various decisions of the Court of Appeal, where the charges are defective. We are guided by the holding in the case of ***Omari Omari Setumbi vs. Rep.***, Criminal Appeal No. 277 of 2015 (CAT at Dar es Salaam) (Unreported), where the Court after finding that the charges that the appellant had faced were defective, considered this and stated :

"We are also aware that not every defect in the charge sheet would vitiate a trial. It would depend on the particular circumstances of each case, the overriding consideration being whether or not the defect worked to the prejudice of he accused person (See; for instance, ***David Halinga v. R.****; Criminal Appeal No. 12 of 2015 (unreported).*

This Court upon perusal and having considered all the circumstances pertaining to this case finds that, failure to cite the proper and particular provision has not in anyways worked to prejudice the accused persons rights, since the charges as they are and the particulars were such as to leave no misunderstanding on the charges that the accused persons were facing.

"In any case it is well known that the need to make reference to the section specifying the offence is twofold as held in the case of ***Charles Lemula vs Rep.****, Criminal Appeal No. 239 of 2015, CAT at Dar es Salaam (unreported). One, it will enable the accused person to know the nature of the case he is going to face. Two, it will also enable the accused person prepare his defence".*

Therefore, I find that despite the defect in the statement of offence in count no. 107, the defect has not led the accused persons not to understand the nature of case they face, nor limited or denied the accused persons in preparation of their defence. The finding of this Court is that the defect in the charge in count no. 107 is curable and in the interest of justice, let the evidence before the Court on this count guide determination of the Court.

On the issue whether TRA suffered a pecuniary loss, all the defence counsels challenged this fact, stating that the absence of the importers to express how the tax was evaded leaves doubt on the loss stated in the count. The Court had an opportunity to examine Exh. P5, P6 and P7. Exh. P5 includes the Report of the handwriting expert and the release orders. Exh. P6 is an analysis of the custom release

orders in the TANCIS system and Exh. P7 is the Forensic Report on the TANCIS System Fraud. Annexure 1 of Exh. P7 expounds on the taxes which were supposed to be paid against the disputed release orders said to have been cleared by Regional Cargo Services, and the amount total being Tshs. 12, 618,970,229.0. There being no challenge on the veracity of this amount it suffices for this Court to find that TRA a specified authority suffered the said pecuniary loss outlined in the charges in count no. 107.

The next issue for consideration is whether it is the accused persons who by their willful acts, omission, negligence, misconduct and failure to exercise their duties in a reasonable manner caused TRA to suffer the said pecuniary Loss. We start by consideration of the 1st accused person. This Court has already determined that the release orders outlined in count no. 2 to 106 were false and therefore forged. That it is the 1st accused person who forged various release orders as specified in count no. 2 to 106 to facilitate clearance of the 329 containers as charged. The evidence addressing these issues has already been presented herein before. Therefore there is no doubt that by willful acts, such as signing on the release orders that effected the unlawful clearance of 329 containers and hiding the files related to the 329 containers, as already discussed hereinabove are all willful acts on the part of the 1st accused person. Therefore, we find the 1st accused person guilty of the offence of Occasioning Loss to a Specified Authority contrary to paragraph 10(1) and (4) of the First Schedule to, and section 57 and 60(2) of the EOCCA Cap 200 RE 2002 as charged.

On the part of the second accused person, there is evidence as discerned from Exh. P5, that he was the one who wrote in the disputed release orders the words "*TPA/ICD proceed*" an action not within his functions and duties and which facilitated the transaction of unlawful removal of disputed containers. The 2nd accused person never disputed that he gave his specimen handwritings to the police for analysis. We have already found the handwriting expert report to be credible and also taken time to examine the photographic enlargements and the Court is satisfied that there is nothing to lead the Court to differ with the findings of PW7. It is the disputed release orders in question which were used to clear the 329 containers where tax dues were not paid as shown in Exh. P5, P6 and P7. His defence was total denial of the charges against him and also stating that the prosecution has failed to prove the loss, a fact which this Court has already dealt with. The issue of discrepancy in the dates related to analysis of the handwritings, the Court has already dealt with finding no record to substantiate that claim but holding that even if that is the case, that is a minor discrepancy not going to the root of the issue under scrutiny, since the main issue being that the analysis was conducted.

On the 2nd accused person, there is evidence that he signed on the gate out passes and release orders and wrote for the process of removal to proceed according to the report by the handwriting expert. We find this is evidence of omission or failure to conduct his duties in a reasonable manner as against the 2nd accused person leading to occasioning loss to a specified Authority. Therefore, taking all these

factors into consideration and the Court findings above, we find the 2nd accused person guilty of the offence of Occasioning Loss to a Specified Authority as charged.

For the 3rd Accused person, we find we need not take much time on this, having regard to our findings in Count No. 1 and there being no other evidence to link the 3rd accused to the pecuniary loss suffered by TRA- a specified authority. We find that the prosecution have failed to prove charges in count no. 107 against the 3rd accused person. Therefore charges he is found not guilty as charged with regard to this count.

For the 4th accused person, the allegations against him are that he linked the importers with PW16 and the CEO of Regional Cargo Services a clearing agent company used to clear the disputed containers. The issue of the defective charges propounded by the defence we have already dealt with hereinabove. The issue of guilty mind of the accused person not being proved was also raised by the defence, since they argued a mere act of connecting a consignee and a clearing and forwarding agent is not a criminal offence. The prosecution relied on Pw16 evidence to connect this accused to the offence charged. The evidence of PW16, who works with JAS Express freight owned by Abdulkadir Kassim Abdi and that upon examining Exh. P1(xi), a letter he wrote on 2/7/2015 requesting transfer of three containers from Dar Port to Azam ICD using XL Company name and also wrote Exh. P1 (xii) and that the cargo was removed by Regional Cargo Services. He stated he knew the 4th accused person

who he was introduced to by one Abdulkadir Kassim, his boss that the 4th accused person was a TRA employee and that he should be linking with him.

The prosecution did not bring any further evidence against the 4th accused person, as it relates to the charges facing him. Having gone through the evidence, the fact that Accused no. 4 might have known the boss of Regional Cargo services or other clearing agents, we find is not enough for the Court to find that there was a willful, omission, misconduct, negligence or failure to exercise his duties in a reasonable manner on the part of the 4th accused person leading to release of the 329 disputed containers, that presently were considering. No evidence to link the pecuniary loss suffered by TRA as outlined in the charges with the 4th accused person. Suspicions however strong are not enough to prove the guilty of an accused. Therefore having considered all the evidence before the Court we find that the prosecution have failed to prove a case against the 4th accused person on charges outlined in count no. 107 and therefore we find the accused person not guilty of the charges in this count.

Moving to the 5th accused person, the evidence against him against the charges in count no. 107 is that, as an employee of Regional Cargo Services, he took part in the clearance of the disputed 329 containers form Azam ICD on the dates specified. PW4 evidence as it relates to 5th accused on these charges was that, he knew accused No. 5, as an employee of Regional Cargo Services, having dealt with the said clearing agent. That the last time he prepared

loading orders for Regional Cargo services was in October or November 2015 and that all the three officers of the Regional Cargo Services were following up the removal of their cargo, including accused no. 5. The other evidence by the prosecution against Accused No. 4 is Exh. P5, is the report which opined that the 5th accused person signed the gate out passes for the disputed containers in the name of John Joseph. The prosecution alleged that the act of using a false name shows he knew what he was doing was unlawful, that of, illegal clearance for the disputed containers. The other evidence was by PW2 who stated he knew that accused no. 5 an officer at Regional Cargo Services was following up to clear containers from Azam ICD.

The 5th accused person defence was that the prosecution failed to prove the offence charged as against him, as required by the law. The defence challenged the fact that there is a generalization of the gate out passes for which the 5th accused is said to have signed using a different name and these gate out passes are alleged to have enabled clearance of some containers, nothing specific being shown. That this raises doubts on the evidence against the accused person.

The Court has carefully pondered on the evidence against the 5th accused person in this count. From the evidence of PW4, PW2 the 5th accused person was an employee of Regional Cargo Services. Also PW16 stated he knew the 5th accused person worked with Abdikadir Kassim companies and that the 5th accused was in the department of moving containers, that he had the identity card to deal with Port

issues and also removed cargo from dry port. Exh. P5 is where the handwriting expert opined that the signatures in the gate out passes belonged to accused no. 5. This relates to Exh. P1(i) and P1(ii) where it shows that it is John Joseph who signed.

It is essential that a case against an accused person must be proved by the prosecution beyond reasonable doubt. We find the evidence against the 5th accused person that is, his act of signing the gate passes with the use of another persons' identity was improper, and not within the functions of his duties, which as testified by prosecution witnesses and himself, was clearance of cargo within the laid down procedures. The act of signing on the gate passes has been proved to have led to the illegal clearance of cargo from AICD as expounded by various witnesses including PW1, PW2, PW4, PW5 and PW6. The 5th accused defence, that the prosecution did not prove the exact number of containers which were removed from this act does not have much weight nor is it sustainable.

Prosecution led evidence to show that the 320 containers were removed in unison, this can be discerned from the fact that the relevant files were hidden by one person, and the fact that it is the same clearing and forwarding company which though without a licence cleared the disputed containers. The Handwriting expert evidence against the 5th accused person is supported by evidence from witnesses that the 5th accused, had worked interchangebly for all the companies under Abdikadir Kassim including Regional Cargo Services. The offence of occasioning loss incorporates a willful act,

omission or lack of due care that occasion's loss to a specified authority. In the event, The Court finds that the prosecution proved that the act of signing gate passes for the disputed containers by the 5th accused was one of the deeds, in a chain of acts, which led to the unlawful removal of containers. This was without doubt a willful act or a showing of lack of care on the part of 5th accused, and thus links him to the charges in Count no. 107. Charges that allege that the 5th accused was part of the loss occasioned as outlined as drawn in the respective charges. For reasons stated herein, the Court thus finds the 5th accused person guilty as charged in this count.

Having found that charges of occasioning loss against the 3rd and 4th accused persons not having been proved, we move to consider Count No. 110 as against them, since this count is an alternative to Count No. 107. It suffices to note that Section 80 of the Tax Administration Act No. of 2015 reads as follows:

"A person who aids, abets, counsels, or induces another person to commit an offence and shall be liable on conviction for a penalty equal to one hundred percent of the tax shortfall".

Count No. 110 in alternative to Count No. 107 reads:

STATEMENT OF OFFENCE

AIDING TAX EVASION Contrary to Section 80 of the Tax Administration Act, 2015

PARTICULARS OF OFFENCE

RAYMOND ADOLF LOUIS, KHALID YUSUPH HASSAN, HARUNI LYSON MPANDE, KHAMIS ALLY OMAR, BENSON VITALIS MALEMBO, DAVID FAUSTINE CHIMOMO AND SAFINA KASIM RUPIA, on diverse dates between 11th July 2015 and 28th October 2015 at AZAM ICD, SOKOTA area within Temeke District in Dar es Salaam Region, aided evasion of import taxes of 329 containers destined to AZAM ICD, SOKOTA amounting to Twelve Billion, Six Hundred Eighteen Million, Nine Hundred Seventy Thousands, Two Hundred Twenty Nine (12, 618,970,229/-)

The Court has scrutinized carefully the contents of section 80 of the Tax Administration Act, and finds that it does not disclose any offence, but it provides for a penalty for those found to have committed the offence of aiding, abetting, counseling, or inducing another person to commit an offence and therefore should not have been used as an offence section. We thus find the charges in this count incurably defective and cannot be cured by the evidence submitted in Court, and thus find this charge incompetent. In any case, even for the sake of argument, there is no evidence brought by the prosecution to connect the 3rd and 4th accused person with any charges related to aiding evasion of taxes within the confinement of the respective charges.

We move to Count No. 108 which concerns the 1st accused only, and it is Money Laundering contrary to section 12 (a) and 13(a) of the Anti-Money Laundering Act, No. 12 of 2006. The 1st accused is alleged on diverse dates between 11th and 12th November 2015 at

CRDB Bank, Lumumba Branch to have engaged directly in a transaction that involved six hundred Eighty Six Million, Eight Hundred Sixty Eight Thousands (686,868,000/-), which it is alleged he received in his bank account number 0112007524200 from XL Clearing and Forwarding Ltd Bank Account number 004120328300001 Amana Bank, Lumumba Branch knowing the money was the proceeds of a predicated offence, namely tax evasion.

It should suffice that to prove an offence of money laundering under section 12(a) and 13(a) of the Anti- Money Laundering Act, 2006 as amended, the following ingredients are essential. (i) engaging directly or indirectly in a transaction that involves property that is proceeds of a predicate offence (ii) presupposes a predicate offence having been committed (ii) knowing or ought to know or ought to have known that the property is the proceeds of a predicate offence.

A predicate offence is defined under section 3 of the Anti-Money Laundering Act, 2006 as amended. Therefore in determining whether or not the prosecution have proved their case the following issues will be considered. First, whether there is a predicate offence committed by the accused or any other person. Second, whether proceeds were acquired or generated from the committed predicate offence. Third, whether the accused person engaged directly or indirectly in transactions related to the proceeds of the predicate offence, knowingly, or circumstances showed he ought to have known that the proceeds where from a predicate offence.

With regard to the highlighted issues for consideration, the position presented by the prosecution with regard to the count and charges under consideration against the 1st accused person. The prosecution argue that forgery and tax evasion are predicate offences and that in this case, the forgery and tax evasion generated proceeds as established by evidence already discussed in the previous counts and therefore that the responses to the 1st and 2nd issue are positive. That with regard to the third issue, which they concede is contentious, the learned counsel for the prosecution submitted that through Exh. P1, where the request for transfer of the 329 containers from Dar es Salaam Port to Azam ICD was made by XL Clearing and Forwarding Ltd, and also that evidence has shown the said containers were cleared by Regional Cargo Services illegally, understanding that both XL Clearing Forwarding Ltd and Regional Cargo Services, according to PW16 were owned by one person- one AbdiKadir Kassim. That it is after unlawful clearance of the 329 containers that XL Clearing and Forwarding transferred funds Tshs. 686,868,000/- from their Bank Account at Amana Bank to the 1st accused person Bank account at CRDB as shown by Exh. P27 to Exh. P30 and the evidence of PW1 and PW32.

The prosecution further contended that the said funds were part of the forgery of 105 release orders and tax evasion of 329 containers. The prosecution submitted that the 1st accused person had knowledge that the proceeds were from tax evasion since he himself took part in the forgery of the release orders used to illegally clear the 329 containers from Azam ICD and evade tax. That at the

same time, the 1st accused had hidden the relevant files Exh. P1 collectively, related to the illegally cleared containers. That these files show the link between XL Company and Regional Cargo Services. That the 1st accused failed to provide any explanation on the funds transferred to his account denying even possessing bank accounts at CRDB, contrary to the evidence before the Court on the matter. The prosecution maintained that the Court be guided by the holding in the case of ***Twaha Elias Mwandugu vs. R.*** (2000) TLR 277 at pg. 286, stating, that though the accused cannot be solely convicted on his lies, but his lies may be used to determine if his guilt has been proved.

On the part of the defence with respect to the first accused person's involvement in the current charges under scrutiny, they started of by defining what is money laundering as expounded in a book titled ***"Money laundering. A guide for Criminal Investigators"*** by John Madinger and Sydney A. Zalopany that state that money laundering is *"the use of money derived from illegal activity by concealing the identity of the individuals who obtained the money and converting it to assets that appear to have come from a legitimate source..."* That in effect the book also revealed that money laundering process has three stages, that is, placement, layering and integration. The placement stage being the form of money being changed or converted; layering stage is where the launder attempts to reduce the impact of the paper trail that includes imposing concealment mechanisms between the money and the source. The

integration stage being, where the launderer attempts to show that the legitimacy of the origin of the funds.

Discerning from all the submissions, the 1st accused defence was that the prosecution, from the evidence presented before the Court have failed to establish the execution of the highlighted three stages related to money laundering. That there is no evidence by the prosecution that managed to establish that the 1st accused person is the owner of account no. O1J2007524200 at CRDB, where an amount of Tshs. 686,868,000/- said to have been received from an account belonging to XL Clearing and Forwarding Limited at Amana Bank, Lumumba Branch. That the evidence of PW32 and Exh. P30 shows the owner of the Account is Raymond Gradius Louis and not Raymond Adolf Louis. That at the same time there was no evidence to show that XL Clearing and Forwarding Limited evaded tax or was aided to evade tax.

The defence also challenged the prosecution assertion that one Abdukadir Kassim Abdi is the CEO or owner of XL Clearing and Forwarding Company Limited, because they contended apart from oral narration by PW31 and Exh. P28(a-i), which is not strong enough, there is no evidence to show that XL Clearning and Forwarding Co. Ltd evaded tax nor that Abdukadir Kassim was the owner and has been charged of evading tax. That the prosecution did not even attempt to call this Abdukadir Kassim Abdi as a witness to prove any such assertions and thus the defence called the Court to draw an adverse inference on this failure by the prosecution to call

Abdukadir as a witness, and that the Court be guided by the decision in ***Hemedi Saidi vs. Mohamed Mbilu*** (1984) TLR 113, that a Court should draw adverse inference where a witness is not called whose evidence would have given evidence contrary to the party's interests.

The defence also allege that for money laundering charges to be effected there has to be conspiracy which they contend the prosecution have failed to prove meaning that the offence of money laundering has not been proved. At the same time the defence alleged that prosecution also failed to prove common intention between the 1st accused person and XL Company Limited to launder the money alleged to have been put in the 1st accused account from XL Company Ltd account.

This Court having heard the evidence and submissions from the prosecution and the defence with regard to this count is aware that for an offence of money laundering to be proved as they relate to charges in count No. 108 for the 1st accused person, the underlying process is to ensure that the ingredients of the offence there in are proved. There is nothing within the framework of the offence requiring that conspiracy be proved as argued by the defence. The issue is to prove that there were funds from a predicate offence laundered by the accused person. In the charges it states that the predicate offence was tax evasion. There is evidence against the 1st accused person already discussed above that the removal of the 329 containers, whereby evidence shows the 1st accused person had forged release orders to facilitate the process. That the removal of the

disputed containers, led to TRA to suffer a pecuniary loss, from the fact that there was tax evasion. Tax evasion being a predicate offence within the confines of section 3 of the Anti- Money Laundering Act, Cap 254 RE 2002 (as amended).

It should be understood that having examined the charges and the related law, money laundering is a distinct offence, from the predicate offence committed leading to money being laundered. Predicate offences criminalize acts which generate proceeds while money laundering addresses any deliberate act in dealing with proceeds of crime. Money laundering thus, does not presuppose there being conspiracy but just deliberate acts. That being the case, as already found herein above for the first accused person, the offence of forgery in counts 2-106 against the 1st accused person, we find have been proved. We also find that the offence of occasioning loss to a specified authority against the 1st accused person was proved. Unfortunately, though the witnesses led by the prosecution alleged there was tax evasion, there was no finding that there was tax evasion for this Court to hold that there were proceeds from the a proven offence of tax evasion which were laundered.

Whilst it is true, that there were exhibit tendered, to show that there was the removal of containers which was unprocedural (having not followed proper procedures), the Court finds it difficult to attribute the loss occasioned to tax evasion as pronounced in count no. 110, which we have already found to be defective. Thus we find that the ingredient of proceeds emanating from a predicate offence

has not been proved. If the charges had specified predicate offence of forgery, the Court would have deliberated accordingly. But, I find that, the prosecution failed to prove the charges against the 1st accused person in count no. 108, and thus the 1st accused person is found not guilty on the charges in count no. 108.

In Count No. 109, which is against the 4th accused only, and it is for Money Laundering contrary to section 12 (a) and 13(a) of the Anti-Money Laundering Act, No. 12 of 2006. It is alleged that the 4th accused person on 2nd October 2015 at CRDB Bank, Azikiwe Branch within Ilala District, engaged directly in a transaction that involved Twenty Five Million shillings (25,000,000/-) which he received in his bank account number 0112026217700 the said sum from SAPATO KYANDO while he ought to have known that the money was the proceeds of a predicate offence, namely tax evasion.

The prosecution side in their final submissions conceded that these charges have not been proved against the 4th accused person. On the part of the defence for the 4th accused person, they contended that the only evidence that touches against the 4th accused person on this count is that of PW33, who testified that the money was paid in the 4th accused bank account at CRDB Bank. But that no bank account number, date of deposit or purpose of payment was presented in Court to substantiate the charges against the 4th accused person. Therefore they argued the Court to find that the prosecution have failed to prove the charges against the 4th accused person on this count.

Bearing in mind that the charges are similar except from the names of the accused person to those in count no. 108, and the fact that the Court has hereinabove found that the prosecution have failed to prove the charges of occasioning loss against the 4th accused person on charges before the Court, there is no evidence presented in Court to prove that the laundering for which the 4th accused person is charged with in Count no. 209 emanates from tax evasion. Therefore, taking all these in consideration, also the fact that the prosecution conceded to the fact that they have not proved the charges against the 4th accused person on this count, I find that the prosecution have failed to prove their case against the 4th accused person in this count beyond reasonable doubt and therefore find the 4th accused not guilty of the charges against him on this count.

Therefore in summary it is Ordered as follows:

For the 1st Count, the **3rd accused** is found **Not Guilty** of the charges of Illegal Computer Data Deletion contrary to section 7(1)(b) of the Cybercrimes Act, 2015.

For Count No. 2 to 106, **the 1st and 2nd accuseds** are found **Guilty** as charged that is Forgery contrary to sections 333, 335 (a) and (d)(i) and 337 of the Penal Code Cap 16 R.E 2002. The 1st accused and 2nd accused persons are therefore convicted accordingly.

For Count No. 107, the **1st accused, the 2nd accused and 5th accused** persons are found **Guilty** as charged of Occasioning Loss to a Specified Authority contrary to Paragraphs 10(1) (4) of the First Schedule and section 5791) and 60(2) of EOCCA Cap 200 RE 2002

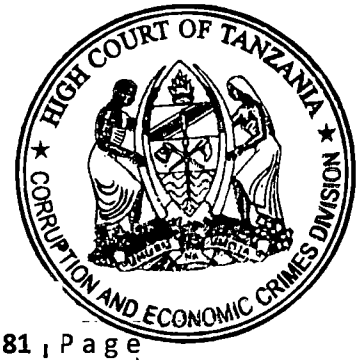
and therefore convicted accordingly of the offence charged. Whereas, for **the 3rd and 4th accused** persons, the Court finds that the prosecution failed to prove the case against the accused persons on this count no. 107 and therefore finds them **Not Guilty**.

For count No. 108, the Court finds that the prosecution failed to prove the charges against the 1st accused, and therefore finds **1st accused** is **Not guilty** for the offence charged of Money Laundering contrary to section 12(a) and 13(a) of the Anti- Money Laundering Act, No. 12 of 2006 as amended.

For count no. 109, the Court finds that the prosecution have failed to prove the case against the **4th accused** on charges of Money Laundering, contrary to sections 12(a) and 13 (a) of the Anti-Money Laundering Act, No. 12 of 2006 and therefore finds him **Not Guilty** as charged.

For count no. 110 which is an alternative to count No. 107, the Court finds the charge incurable defective. Having regard to the evidence before the Court, the Court found it will be a waste of time and it will not serve any useful purpose to invite any amendments at this juncture.

Therefore, the **3rd and 4th accuseds** are consequently acquitted for all the offence charged and are set at liberty unless held for other lawful purposes.



Winfrida B. Korosso

Judge

25th March 2019

Date: 25/03/2019

Coram: Hon. W.B. Korosso, J.

For Republic – Kweka, PSA

For 1st Accused –Wabeya- Advocate

1st Accused - Present

For 2nd Accused –Godfrey Martin for Kunju,- Advocate

2nd Accused - Present

For 3rd Accused –Njama Advocate for Nehemiah Nkoko - Advocate

3rd Accused - Present

For 4th Accused –Yahya Njama, Geofrey Martin Advocate

4th Accused – Present

For 5th Accused –Wabeya Advocate for Mshana Advocate

5th Accused - Present

B/C. Mr. N.C. Malela

PSA

The case is for judgment and we are ready.

Njama Advocate

On behalf of all defence advocates we are ready.

Court

Judgment delivered in open Court this day in the presence of Tumaini Kweka, learned State Attorney for the Republic Mr. Wabeya learned Advocate for 1st accused and 5th accused persons Mr. Njama learned Advocate and Geofrey Martine learned Advocte for 4th Accused. Mr. Njama advocate for 3rd accused and Mr. Geofrey Martin for 2nd accused person. All accused persons are present.

Sgd: Winfrida B. Korosso
JUDGE
25/03/2019

SENTENCING

Prosecution

On the part of the 1st accused person. We have no previous record, in view of the offence for which the accused person have been convicted, which go to the root of the economy. We pray that commensurate punishments be accorded with regard to offences for which the 1st accused has been convicted.

On the part of the 2nd accused for offences in counts he has been convicted, we do not have previous record. We pray the Court to provide punishment as guided by the law. With regard to occasioning loss a commensurate sentence be given and an order for compensation to the specified Authority be provided in accordance with the law.

For the 4th Accused No.5, on the part of occasioning loss for which he has been convicted, there is no previous record. We pray for commensurate sentence and order for requisite compensation in accordance with the law.

Winfrida B. Korosso
JUDGE
25/03/2019

MITIGATION

Counsel for 1st Accused

The 1st accused has no previous record, we pray the Curt exercise leniency for the offence for which he has been convicted. We pray the Court consider the following

(1) The accused is a first offender

(2) Consider the time the accused has been imprisoned since as of 29/11/2015

(3) The 1st accused person has a family which depends on him he has a wife and four small children

(4) We pray the Court to consider that the accused has obliged and been obedient to the Court.

(5) The accused is very remorseful.

We thus pray that the Court provide a lenient sentence to the 1st accused person for the offence he has been convicted of.

Winfrida B. Korosso
JUDGE
25/03/2019

Accused No.1

Since the start of Azam ICD we have never suffered a loss. I have continuously worked diligently for nine years. If there was a problem, then it was not by a wilful Act at Azam ICD. I have dependents who rely on me. I pray my time in prison should be considered and since March 2016, I have not been paid any salary my family live a desperate eye without any means since I the breadwinner incarcerated.

Winfrida B. Korosso
JUDGE
25/03/2019

Wabeya for 5th Accused

On the part of the 5th Accused person, we pray that the Court be lenient when granting punishment to the 5th accused guided by the following

(1)The 5th accused is a first offender. No previous criminal record

(2)The Court consider the time the accused has been imprisoned, since as 22/01/2016

(3)The 5th Accused has a family dependent on him, he has a wife and two children

(4)The accused person has exercised diligence, politeness all the time he has appeared in Court

(5)All the time he has been incarcerated he is remorseful.

Sgd: Winfrida B. Korosso
JUDGE
25/03/2019

Accused No.5

I pray the Court exercise leniency

(1) I have a wife and two small children. My wife is a house wife. I have an elderly mother all are dependent on me.

Sgd: Winfrida B. Korosso
JUDGE
25/03/2019

Geofrey Martin Advocate for 2nd Accused

We pray when meting sentence the Court be lenient. The accused has been polite and committed the accused is the one who takes care of his parents. The accused has wife and children who are dependent on him. The accused person is a first offender.

Sgd: Winfrida B. Korosso
JUDGE
25/03/2019

Accused No.2

I thank the Lord. I pray for leniency, I have worked for nine years at Azam ICD or caused any loss.

I have elderly a grandmother and mother, a wife and children who are dependant on me.

Sgd: Winfrida B. Korosso
JUDGE
25/03/2019

Court

Sentencing on Wednesday 27/03/2019 at 9.00 am.

Sgd: Winfrida B. Korosso
JUDGE
25/03/2019

Court:

(1) Let the 1st and 5th accused persons be further remanded in custody.
(2) The 2nd accused bail is cancelled upon his conviction on forgery and occasioning loss to a specified Authority.
(3) Sureties for 3rd and 4th accused person discharged from their obligations.

Sgd: Winfrida B. Korosso

JUDGE

25/03/2019

Date: 27/03/2019

Coram: Hon. W.B. Korosso, J

For Republic – Tumaini Kweka, Principal State Attorney

For 1st Accused –Wabeya- Advocate

1st Accused - Present

For 2nd Accused –Masuna Kunju- Advocate

2nd Accused - Present

For 5th Accused –Mshana-Advocate.

5th Accused - Present

B/C. Mr. N. C. Malela

Principal State Attorney

The matter is for sentencing and all the three accused persons are present and we are ready.

Mshana Advocate

All the accused persons are ready

SENTENCE

On the 25th of March 2019, this Court delivered judgment in respect of charges facing the 1st to 5th Accused persons. The Court acquitted the 3rd and 4th accused person on all charges facing them in Count No.107 and for the 4th accused in count No.109.

The 1st and 2nd accused persons, Raymond Adolf Louis and Khalid Yusuph Hassan, were convicted on charges for each count in counts No.2 to count 106, that is Forgery Contrary to Section 333,335(a) and (d)(i) and 337 of the Penal Code, Cap.16 RE 2002. Raymond Adolf Louis (1st accused) and Khalid Yusuph Hassan (2nd accused) each was also convicted for charges in count No.107 that is, Occassioning loss to a specified Authority, contrary to paragraphs 10(1) and (4) of the first schedule to, and sections 57(1) and 60(2) of the Economic and Organized Crime Control Act, Cap 200 RE 2002 Raymond Adolf Louis (1st accused) was acquitted on charges in count No.108 related to money laundering contrary to sections 12(a) and 13(a) of the Anti-Money Laundering Act, No.12 of 2006 as amended.

Benson Vitalis Malembo (5th accused) was convicted on the charges of occasioning loss to a specified Authority, contrary to paragraph 10(1) and (4) and Sections 57(1) and 60(2) of the Economic and Organized Crime Control Act Cap 200 RE 2002, as found in count No.107.

Upon conviction relating to the charges as specified above, the Court upon hearing the allocatus and mitigation prayers adjourned delivery of sentences for the convicted offences. The Court has gone through and carefully considered submissions by the prosecution and defence that the 1st accused, 2nd accused and 5th accused persons are first offenders. That the 1st accused has a family that is a wife and small children are dependent on him for their livelihood. For the 2nd accused person, the Court was informed that he has orderly grandmother and mother and children and a wife who is a housewife all dependent on him to sustain their lives. For the 5th accused person, he claimed he has a wife and two small children, all dependant on him. The accused

persons also prayed that the Court consider the fact that throughout the trial, the convicted accused persons have exhibited commitment, diligence humility and respect to the Court, and that each of the convicted accused persons have shown remorse.

The Court has further considered the period the accused persons have been in custody, for the 1st accused person, who was arrested on the 29/11/2015, he has been in custody for 3 years and 4 months. The 2nd accused person was arrested on March 2016, but was later granted bail. The 5th accused person was arrested on the 22/01/2016 and thus he has been under custody for 3 years and two months.

The Court has also considered submissions from the accused persons, that all the time they had been working in their respective offices, they exercised diligence, not at any time being accused of any wrong doings.

The Court has also considered submissions from the prosecution that the offence charged are serious and affect the economy of the Country and thus in sentencing the Court should be guided by the provisions of the law including order for compensation to a specified Authority in respect to conviction charges of occasioning loss to a specified Authority.

Thus having considered all the above it is ordered as follows:

1. For charges of Forgery c/s 333,335(a)(d)(i) and 337 of the penal code, Cap.16 RE 2002 expounded in count No.2 to 106.

   (a) Raymond Adolf Louis, the 1st Accused person is sentenced to three (3) years imprisonment for each count (count No.2 to 106)

(b) Khalid Yusuph Hassan, the 2nd Accused person is sentenced to three (3) years imprisonment for each count (count No.2 to 106)

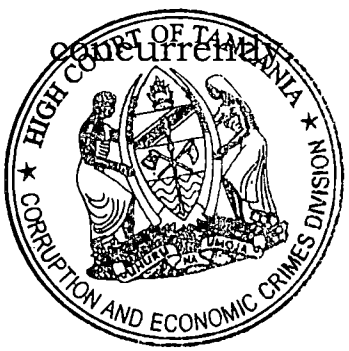
2. For charges of occasioning loss to a specified Authority c/p 10(1) and (4) of the first schedule to and Section 57(1) and 60(2) of the EOCCA Cap 200 RE 2002 in count No.107

(a) For Raymond Adolf Louis, first accused person, he is sentenced to TWO (2) years imprisonment.

(b) Khalid Yusuph Hassan, 2nd accused person, he is sentenced to TWO (2) years imprisonment

(c) Benson Vitalis Malembo (5th accused) sentenced to TWO (2) years imprisonment.

3. All sentence to start running from the date of this order. All sentences for 1st and 2nd accused persons to run concurrently.

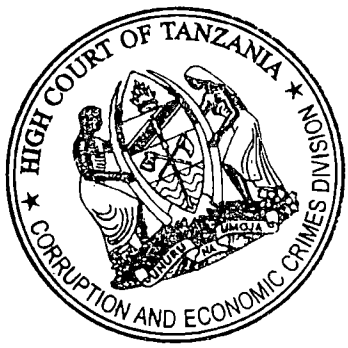


Winfrida B. Korosso
JUDGE
27/03/2019

Order

Pursuant to paragraph 10(4) of the first schedule to EOCCA Cap 200 RE 2002, the 1st, 2nd and 5th Accused person shall upon Release from Prison upon completion of their sentences, pay to Tanzania Revenue Authority, the concerned relevant Authority compensation of an amount that is half the amount of the loss specified in charges in count No.106. Payment of compensation shall have regard to the principle of sharing amongst all the convicted accused persons.

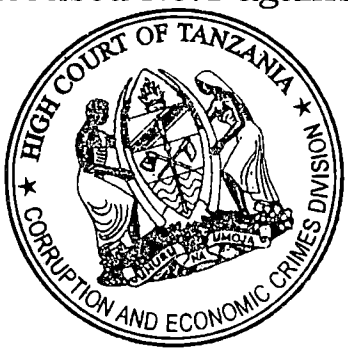
Ordered.



Winfrida B. Korosso
JUDGE
27/03/2019

Mshana Advocate

We pray to give notice of appeal for Accused No.5, Accused No.2 and accused No.1 against conviction and sentence.



Winfrida B. Korosso
JUDGE
27/03/2019