

IN THE SUBORDINATE COURT OF THE FIRST CLASS

IJ/90/2015

FOR THE LUSAKA DISTRICT

SITTING AT CHIPATA

(CRIMINAL JURISDICTION)

BETWEEN:

THE PEOPLE

VERSUS

SYDNEY KASUNGA MUMBA

1ST ACCUSED (A1)

LEWIS MWENYA

2ND ACCUSED (A2)

PLASTON MOYO

3RD ACCUSED (A3)

EMMANUEL ANDREW PHIRI

4TH ACCUSED (A4)

LUCAS MBEWE

5TH ACCUSED (A5)

CORAM: MR. KENNETH MULIFE – CHIEF RESIDENT MAGISTRATE

FOR THE STATE: Mr. M. Mayembe – Public Prosecutor, Anti-Corruption Commission

FOR THE ACCUSED: Mr. L.M. Chikuta – Messrs Mumba Malila and Partners

JUDGMENT

STATUTES REFERRED TO:

1. The Judicature Administration Act, Chapter 24 of the Laws of Zambia
2. Penal Code, Chapter 87 of the Laws of Zambia

CASES REFERRED TO

1. Chtundu Vs. The People (1969) Z.R 67
2. Isa Yona Sibale Vs. The People SCZ Judgment No. 4 Of 2009
3. Kalebu Vs. The People (1977) Z.R. 169
4. Kaseke Vs. The People (1974) Z.R. 51
5. Kalonga Vs. The People (1976) Z.R 124 (Hc
6. Mwewa Murono Vs. The People (2004) Z.R. 207 (S.C)

WORKS REFERRED TO

1. Osborne's Concise Law Dictionary
2. Clerks of Court Hand Book, July, 2007

INTRODUCTION

In this matter, the accused persons stand variously charged with eleven counts of the offence of theft by public servant contrary to section 272 as read with section 277 of the Penal Code, Chapter 87 of the Laws of Zambia. Particulars under the 1st count allege that A1 and A2 on dates unknown but between 1st September 2007 and 31st March 2009 at Chipata in the Eastern Province of the Republic of Zambia, being persons employed in the public service namely Judiciary, as Clerk of Court and Provincial Accountant, respectively did steal a total amount of K65, 767, 212.78 (old currency) from the Judiciary Client Account number 06002200003138 domiciled at Zambia National Commercial Bank in Chipata which came into their possession by virtue of their employment, property of the government of the Republic of Zambia.

Particulars under the 2nd count allege that A2 and A3 on dates unknown but between 23rd March 2007 and 11th September 2009 at Chipata in the Eastern Province of the Republic of Zambia, being persons employed in the public service namely Judiciary, as Provincial Accountant and Provincial Local Courts Officer, respectively did steal a total amount of K954, 266,866.24 (old currency) from the Judiciary Expenditure Account number 0600220004321 domiciled at Zambia National Commercial Bank in Chipata which came into their possession by virtue of their employment, property of the government of the Republic of Zambia.

Particulars under the 3rd count are that A2, A3 and A4 on dates unknown but between 7th August 2008 and 26th October 2009 at Chipata in the Eastern Province of the Republic of Zambia, being persons employed in the public service namely Judiciary, as Provincial Accountant, Provincial Local Courts Officer and Court Clerk, respectively did steal a total amount of K60, 254, 128.00 (old currency) from the Judiciary Expenditure Account number 0600220004321 domiciled at

Zambia National Commercial Bank in Chipata which came into their possession by virtue of their employment, property of the government of the Republic of Zambia.

Particulars under the 4th count are that A3 and A4 on dates unknown but between 7th August 2008 and 27th November 2008 at Chipata in the Eastern Province of the Republic of Zambia, being persons employed in the public service namely Judiciary, as Provincial Local Courts Officer and Court Clerk, respectively did steal a total amount of K10, 400,000.00 (old currency) from the Judiciary Expenditure Account number 0600220004321 domiciled at Zambia National Commercial Bank in Chipata which came into their possession by virtue of their employment, property of the government of the Republic of Zambia.

Particulars under the 5th count are that A1 on dates unknown but between 1st January 2008 and 30th May 2009 at Chipata in the Eastern Province of the Republic of Zambia, being a person employed in the public service namely Judiciary, as Clerk of Court did steal a total amount of K25, 200,000.00 (old currency) from the Judiciary Collection/Fines Account number 060022000475 which came into his possession by virtue of his employment, property of the government of the Republic of Zambia.

Particulars under the 6th count state that A1 and A3 on dates unknown but around 3rd May 2007 at Chipata in the Eastern Province of the Republic of Zambia, being persons employed in the public service namely Judiciary, as Clerk of Court and Provincial Local Courts Officer, respectively did steal a total amount of K20, 653,000.00 (old currency) from the Judiciary Expenditure Account number 0600220004321 domiciled at Zambia National Commercial Bank in Chipata which came into their possession by virtue of their employment, property of the government of the Republic of Zambia.

Particulars under the 7th count state that A1, A2 and A3 on dates unknown but between 24th May 2007 and 31st December 2009 at Chipata in the Eastern Province of the Republic of Zambia, being persons employed in the public service namely Judiciary, as Clerk of Court, and Provincial Accountant and Provincial Local Courts Officer, respectively did steal a total amount of K75, 430,756.00 (old currency) from the Judiciary Expenditure Account number 0600220004321 domiciled at Zambia National Commercial Bank in Chipata which came into their possession by virtue of their employment, property of the government of the Republic of Zambia.

Particulars under the 8th count are that A3 on dates unknown but around 4th July 2008 at Chipata in the Eastern Province of the Republic of Zambia, being a person employed in the public service namely Judiciary as Provincial Local Courts Officer did steal a total amount of K3, 000,000.00 (old currency) from the Judiciary Expenditure Account number 0600220004321 domiciled at Zambia National Commercial Bank in Chipata which came into his possession by virtue of his employment, property of the government of the Republic of Zambia.

Particulars for the 9th count allege that A2 and A3 on dates unknown but between 22nd October 2007 and 31st October 2009 at Chipata in the Eastern Province of the Republic of Zambia, being persons employed in the public service namely Judiciary, as Provincial Accountant and Provincial Local Courts Officer, respectively did steal a total amount of K613, 335, 538.66 (old currency) from the Judiciary Expenditure Account number 0600220004321 domiciled at Zambia National Commercial Bank in Chipata which came into their possession by virtue of their employment, property of the government of the Republic of Zambia.

Particulars under the 10th count state that A2 on dates unknown but between 1st January 2007 and 31st December 2009 at Chipata in the Eastern Province of the Republic of Zambia, jointly and

whilst acting together with other persons unknown did steal a total of amount of K207, 065, 010.00 (old currency) from the Judiciary Expenditure Account number 0600220004321 domiciled at Zambia National Commercial Bank in Chipata which came into his possession by virtue of his employment, property of the government of the Republic of Zambia.

Particulars under the 11th count allege that A2, A3 and A5 on dates unknown but between 1st January 2007 and 31st December 2009 at Chipata in the Eastern Province of the Republic of Zambia, being persons employed in the public service namely Judiciary, as Provincial Accountant, Provincial Local Courts Officer and District Local Courts Officer, respectively did steal a total amount of K132, 932, 000.00 (old currency) from the Judiciary Expenditure Account number 0600220004321 domiciled at Zambia National Commercial Bank in Chipata which came into their possession by virtue of their employment, property of the government of the Republic of Zambia.

INGREDIENTS OF THE OFFENCE

The Accused persons pleaded not guilty to their respective charges. I warn myself at the outset that the onus is upon the prosecution to prove its allegations beyond all reasonable doubt and there is no onus on the accused persons to prove their innocence. This position is in accordance with the case of *MWEWA MURONO VS. THE PEOPLE* (2004) Z.R. 207 (S.C) in which it was held as follows:

In criminal cases, the rule is that the legal burden of proving every element of the offence charged, and consequently the guilt of the accused lies from beginning to end on the prosecution...The standard of proof must be beyond all reasonable doubt.

If after considering all of the evidence in this case there is any doubt in my mind as to the guilty of the accused persons then they should be given the benefit of that doubt. In order to establish the guilty of the accused the prosecution must satisfy me upon each and every ingredient of the offence charged.

The Penal Code, has not defined the offence of '**theft by public servant**'. The requisite provisions only prescribes the penalties as follows:

Section 272. Any person who steals anything capable of being stolen is guilty of the felony termed "theft", and, unless owing to the circumstances of the theft or the nature of the thing stolen some other punishment is provided, is liable to imprisonment for five years.

Section 277. If the offender is a person employed in the public service and the thing stolen is the property of the Government, a local authority or a corporation, body or board, including an institution of higher learning in which the Government has a majority or controlling interest, or came into his possession by virtue of his employment, he is liable to imprisonment for fifteen years.

The definition of the offence is found in other provisions of the same statute. Thus, section 265(1) of the Penal Code deems theft to have occurred "**if a person fraudulently and without claim of right takes anything capable of being stolen...**"

Crucial to this allegation, section 265(2) (a) of the same statute provides that a fraudulent intention would be established provided that when a person took such property, he did so with an intention permanently to deprive the owner thereof. Section 264(1) of the same statute stipulates that "**every inanimate thing...which is the property of any person, and which is movable, is capable of being stolen**".

In this case therefore, the prosecution must prove that the accused persons:

1. Without claim of right, took the amounts of money listed in the charge sheet. Here, I must state that the money in issue is something capable of being stolen within the meaning of section 264 (1) of the Penal Code because it is inanimate, movable and is property of a person or the Government of the Republic of Zambia;
2. With the intention permanently to deprive the government of the Republic of Zambia, the owner thereof. And,
3. That the money came into their possession by virtue of their employment in the public service.

CASE FOR THE PROSECUTION

The above are the ingredients of the subject offence. All the accused persons pleaded not guilty to their respective charges. I shall now consider the evidence. The prosecution called thirteen witnesses. **Tembo Fidelis (pw1)** is an internal auditor in the Ministry of Works and Supply. He told the court that between August 2006 and July 2014, he was seconded to the Judiciary headquarters in the position of Senior Internal Auditor. He stated that his duties at the Judiciary included carrying out special routine audits throughout the country at all levels of the court system. As regards the instant case, Pw1 told the Court that the Judiciary had the following bank accounts: the Judiciary Expenditure Account, the Fees Account, the Clients Account and the Sherriff's Account. He stated that the High Court Client's Account is a trust account because it is constituted of money deposited by litigants who have been fined. He outlined the procedure of withdrawing money from this account as follows: the successful litigant would apply to the sub-

warrant holder (the Principal Resident Magistrate) for payment. If the application is approved, the assistant registrar or clerk of court would prepare a payment voucher using a case record. Thereafter, a cheque would be prepared in the name of the applicant, recorded in the cheque distribution register and signed for by the applicant before he or she collects it. He said that it is only successful litigants whose opponents have been ordered to pay them who are entitled to benefit money from the Client's Account.

Pw1 further explained to the Court the nature of the Fines Account held by the Judiciary at Zanaco – Chipata Branch. He stated that the account is constituted of money deposited from fines which courts order against some accused persons adding that the money is eventually transferred to the government treasury called control no. 99 held at the Bank of Zambia and that no individual is empowered to access it. He stated that before this money is deposited into the fines account, it is receipted in the General Receipt Book, then posted into the revenue cash book. He said that at the end of every month, his team conducts reconciliation on the mentioned account in order to ensure that the money has been accounted for.

Concerning the Judiciary Expenditure Account, pw1 stated that it is used to receive funding from the Judiciary headquarters adding that the account in Chipata is managed by the provincial accountant. He told the court that when funding has been received from headquarters, the provincial accountant would alert the Principal Resident Magistrate (PRM) who would call for a meeting of the Finance Committee to prepare a budget whose financing would be made possible by payments approved by the PRM. Payments are possible by way of preparation of payment vouchers that would culminate into a cheque supplied by ZANACO.

Pw1 told the court that payments from the Judiciary Expenditure Account can be by way of imprest paid to an officer in order to facilitate payment for the services required by the Judiciary.

Pw1 stated that during the years 2006 – 2009, his unit had inadequate personnel, a position which posed challenges in auditing provinces. He stated that during his audit of the Judiciary in the Eastern Province, he did not collect any accounts document but photocopies of payments and bank statements adding that this is the practice wherever he conducted an audit. He told the court that the officers who keep the originals of such documents are either bailiffs handling money, clerks of court, provincial accountants or assistant registrars adding that these are the officers, among others, whom he dealt with in the Eastern Province. He particularly identified A2, A3 and A5 to be the officers he dealt with.

He added that during his tenure at the Judiciary, he participated in the training of clerks in financial regulations at a workshop that was held at NIPA.

Under cross-examination by A1, pw1 told the court that his area of concentration in the Eastern Province in 2007 – 2009 was revenue collection and not whether or not money was missing. As such, he did not audit the Client's Account and the Fines Account adding that at no time did he find a beneficiary to the Clients Account complaining of not having been paid. He further told the court that at no time did reports of internal auditors and external auditors conflict each other because the office of the Auditor General use reports of internal auditors to compile the Auditor General's Report.

Under cross-examination by A2, pw1 told the court that he is aware that the audit reports for the period in issue do not indicate queries about missing money.

Under cross-examination by A3, Pw1 told the court that it is not an offence for an officer to be paid imprest for as long as there is authority by a warrant holder for that imprest to be paid.

Under cross-examination by A4, pw1 told the court that a sub-warranty holder has authority to authorize payment.

Jenipher Bwalya (pw2) is a Magistrate. She told the Court that before being appointed as a Magistrate, she was an Assistant Registrar stationed at Chipata High Court effective 3rd March 2009. She outlined her duties as Assistant Registrar as follows: overseeing personnel at Chipata High Court, maintaining the Client's Account for the High Court and registries for the High Court. As regards maintenance of deposits in the Client's Account, pw2 outlined her role as follows: she would inspect receipts in order to ensure that clerks of court have receipted the money and that they have made correct entries in the cash books as regards the amounts of money that was finally deposited in the bank. She further stated that the cash book would indicate how much was paid out, to whom and when the payment was effected. She told the court that prior to her deployment as Assistant Registrar, A1 was administratively appointed to execute the functions of assistant registrar at Chipata High Court adding that his substantive position was that of clerk of court. It is Pw2's testimony that a few days after assuming the office of assistant registrar, beneficiaries from the Clients' Account no. 0600220003138 (hereinafter

referred to as the 'Client's Account') approached her in order to claim for payment of money deposited in their favour in the mentioned bank account. She stated that in verifying each claimant's claim, she would inspect the cash book and requisite case record whereupon she would instruct a clerk of court to effect payment if the records were correct. Payment would be made in the name of the beneficiary. However, if the beneficiary has no national registration card (nrc) or a bank account, he or she would be expected to write a letter authorizing payment through another person. However, she faced the challenge of paying claimants whose cases were concluded between 2007 and 2009 before she took-up the office of Assistant Registrar. This was on account of lack of money in the Clients' Account a position which prompted her to inspect the requisite statement of account which disclosed that as at August 2009, the Client's Account had a negative balance of K11, 373.84 (old currency). After making this discovery, she queried the Provincial Accountant (A2) who informed her that the account was in that state due to bank charges adding that Pw2 should ask the applicants to be paid in instalments. Pw2 stated that many more claimants continued to submit their claims. Using the Cash Book and case records, Pw2 established that the claimants' money was properly paid into court and banked but that it was not paid out to the rightful beneficiaries. Some folios that remained in cheque books after the payee has collected his or her cheque disclosed that payments were made to members of staff amongst whom were A1 and A2. However, such payments were not supported by case records indicating that A1 and A2 were successful litigants so that the money which they withdrew was awarded to them through an order of court. When she queried A1 and A2 concerning the indication that they had been paid money from the Client's Account, A2 told her that he withdrew the money and utilized it to pay for labour day celebrations after obtaining authority from the Chief Administrator adding that the authority was granted because the grant for the

labour day celebrations was not disbursed in good time adding that the money that was drawn would be reimbursement in the Client's account the moment the labour day grant was disbursed and deposited in the Judiciary Expenditure Account. However, pw2 was not shown the written authority from the Chief Administrator authorizing A1 and A2 to withdraw money from the Client's Account.

According to pw2, there is no government revenue which is deposited in the Client's Account adding that money for administrative purposes is deposited in the Judiciary Expenditure Account or the Fees Account. She stated that she was compelled to request for an amount of K10, 000, 000.00 (old currency) from the Judiciary headquarters in order to replenish the Clients Account. This request was approved.

Pw2 told the court that she discovered the withdrawals of money from the Client's Account by members of staff for the Judiciary through the requisite bank statement of account, receipt books and cheque books whereupon she reported her observations to the District Registrar, Mr. Collins Lunda. The receipt book in which Pw1 discovered the mentioned withdrawals was marked exhibit p4 after she identified and produced it in evidence. The mentioned statement of account is in respect of bank account no. 0600220003138. It was marked exhibit p2 after it was identified and produced in evidence by pw2. Here I must mention that exhibit p2 indeed indicate that A1 and A2, among others were paid various amounts of money from the Clients Account.

The cheque book from whence pw2 discovered withdrawals by A1 and A2 from the Client's Account was marked exhibit p3 after pw2 identified and produced it in evidence.

Pw2 also testified about the Fines Bank Account no. 060022004321 held by the Judiciary at Zanaco – Chipata Branch. She told the court that this account serves the purpose of depositing money ordered as fines by the High Court. Eventually, the money would be transmitted into Control 99 which is a national treasury account held by the Bank of Zambia. She told the Court that the receipted fines were expected to be deposited in the Fines Account the same day they are collected. However, if for a reason they cannot be deposited the same day, they should be banked the following day.

She stated that the Judiciary or any of its employees are not empowered to withdraw money from the Fines Account. As such there are no cheque books in respect of this account. However, there is a receipt book from whence she used to issue receipts in respect of the fines which were paid. The particular receipt book bears no. 03192. It was marked exhibit p1 after it was identified and produced in evidence by pw2.

Under cross-examination by A2, Pw2 told the court that the Clients and Fines Account receipt book were audited. She also stated that the Client's Account is also called a General Account adding that she is not aware that the General Account used to receive money for expenditure (i.e. RDCs).

Under cross-examination by A3, pw2 told the court that she does not know why other judiciary members of staff who withdrew money from the Clients Account are not before court in order to be tried for the instant charges.

Jessy Tembo (pw3) told the court that her husband was fined an amount of K16, 000,000.00 (old currency) for a road traffic offence. She stated that on the same date he gave her an amount of K12, 000,000.00 to pay towards the mentioned fine which she paid to A1 at Chipata Subordinate Court on 18th May 2009. A1 gave her a receipt to signify this payment. It was marked exhibit p5 after she identified and produced it in evidence.

Bwalya Mutale (pw4) is a Human Resource Management Officer for the Judiciary in the Eastern Province. He told the court that during the period in issue, A1 – A5 were employees of the Judiciary in the following positions: A1 was a Clerk of Court, A2 was a provincial Accountant, A3 was a Provincial Local Courts Officer, A4 was a Court Clerk and A5 was a Court Clerk. To prove this aspect, pw4 identified and produced in evidence, personal files of A1 –A5 herein marked exhibits p6(a), p6(b), p6(c), p6(d) and p6(e), respectively. Furthermore, pw4 outlined A1 – A5's duties as follows: that A1 looked after court records, receipted money and commissioned documents. A2 was entrusted with the financial resources of the Judiciary in the Eastern Province. A3 was the overall supervisor of Local Courts in the Eastern Province. A4 used to record court proceedings and issue out receipts to people who paid money. A5 used to record court proceedings and issue out summonses.

Under cross-examination by A1, pw4 told the court that he was not aware that A1 was a Judge's Marshal and that he does not know the duties of a marshal to a judge.

Thomas Phiri (Pw5) is a handwriting expert serving in the Zambia Police Service. He told the Court that on 16th August 2013, he received from Pw13 for purposes of forensic examination, the following documents: 23 ZANACO cheques in the names of A1, 51 ZANACO cheques in the names of A2, 39 ZANACO cheques in the names of A3, 15 ZANACO cheques in the names of A4 and 36 ZANACO cheques in the names of A5. These batches of cheques were marked exhibits p 8(e), p8 (d), p8 (b), p8(c) and p8 (a), respectively after they were identified by pw5 and produced in evidence by pw13.

Pw5 was also given specimen sample documents prepared or signed by A1 – A5 and one Maurien Zulu. These were leave forms and arrival advice forms. The leave forms for A1 –A5 were marked exhibits – p10 (a), p9(d), p9(c), p9(e) and p9(a), respectively after they were identified and produced in evidence. After analyzing the mentioned documents, Pw5 found that A1 – A5 took part in preparing and signing the mentioned cheques bearing their respective names. Pw5 recorded his findings in a Zambia Police Service photographic album which was marked exhibit p7 after he identified and produced it in evidence.

Mangaliso John Luhanga (pw6) told the court that he is a Director of a Construction Company called Singanizizwa Company specialized in rehabilitating and maintaining buildings. He stated that in 2008, he was contracted by the Permanent Secretary for Eastern Province acting on behalf of the Government of the Republic of Zambia, to rehabilitate Tembwe Local Court Situated in Chama District. The contract price was in the amount of K214, 000,000.00 (old currency) which he was paid in some instance, by cheque and in one instance through a bank transfer. To prove

this engagement, pw6 identified a written contract contained in a file. The file was marked exhibit p12 after it was produced in evidence by pw14.

Chileshe Vincent (pw7) is a Principal Accountant stationed at the Judiciary headquarters in Lusaka. His job description include supervising senior accountants and provincial accountants. He stated that according to the Judicature Act, the sources of funds for the judiciary is the treasury and it comes in form of Recurrent Departmental Charges (RDCs) and court fees adding that the Judiciary also receives funds from donors. He also stated that the Judiciary is not authorized to withdraw money or to use the money received in form of fines ordered against convicts by courts in criminal matters unless permitted by the treasury. He told the court that the judiciary receives funds from the treasury through an account called control no. 20 held at the Bank of Zambia which has a mirror account held at ZANACO. The mirror account eventually credits the funds to various beneficiaries who include the judiciary in all the provinces. Pw7 told the court that RDCs serve the purpose of funding day-to-day administrative operations of the judiciary, court circuiting and sessions, house rentals for adjudicators, repair of motor vehicles and personal emoluments.

Pw7 stated that the Judiciary in provinces have each an Expenditure Account in which forty percent of the collected fees and RDCs are banked and this is the source of money used for day-to-day administrative costs. He outlined the procedure of withdrawing money from the Expenditure Account as follows: the warrant holder for the Judiciary who is the Chief Administrator appoints a sub-warrant holder who could be an assistant registrar of the High Court or a provincial local courts officer adding that the sub-warrant holder for Eastern Province

for the period 2007 – 2009 was the Provincial Local Courts Officer – A3. The role of the sub-warrant holder as regards the Expenditure Account is to approve or disapprove requests by officers of the Judiciary for payment of money from this account. If the request is approved, depending on the availability of money in the account, a payment voucher (which is a prescribed accountable document) would be prepared indicating the amount of the money to be paid out and the source i.e. the vault, the name and national registration card number of the payee. Pw7 told the court that the payment voucher shows the signatures of the sub-warrant holder, the officers who prepared and checked it. Thereafter, the accountant shall pass the voucher for payment by stamping it and the cheque and backing sheet would be prepared. The backing sheet shows the details contained in the payment voucher. The backing sheet and the cheque is signed by personnel from two panels. One panel of signatories comprises personnel in the accounts unit. The other panel comprises personnel in administration who include the sub-warrant holder. Once the backing sheet is taken to the bank, beneficiaries would be at liberty to collect their cheques upon signing in the cheque register. Pw7 told the court that if payment was in respect of imprest to a court official, the officer must retire the imprest within a period of forty-eight hours upon executing the activity for which he was paid. He added that other than payment by cheque, payment is also possible using an acquittal sheet whereby a cheque would be issued in the name of a particular officer of the Judiciary who would draw the cash and subsequently pays other officers after they have signed an acquittal sheet. The officer in whose names the cheque was issued retires the payment using the signed acquittal sheet.

Pw7 told the court that copies of payment vouchers accompanying a cheque are distributed as follows: the original copy is filed together with a backing sheet, the payee is given a second copy

(the duplicate); the third copy remains with the office for filling purposes and keeping of the audit trail whereas the fourth copy is placed on the policy file on which the payment was processed or on the officer's personal file if the payment was processed using that officer's file.

As regards backing sheets accompanying a cheque, Pw7 told the court that they are distributed as follows: the original is kept by the accountant, the duplicate is kept by the payee, the third-copy is kept in the third copy file in the accounts office where as the last copy is kept on the policy file (in the custody of the registry) or the payee-officer depending on the file that was used to prepare the cheque.

Pw7 told the court that the other way of paying out money from the Expenditure Account is by way of an electronic bank transfer and this is in respect payments involving money in excess of K100, 000, 000. 00 (old currency).

He told the court that during the period 2007 – 2009, the Provincial Accountant for the Judiciary in the Eastern Province was A2.

Pw7 also told the Court that the Judiciary in all the provinces has a Client's Account which is also called the RM's Account adding that the funds held in this account are neither for the government nor the Judiciary but for litigants in whose favour the payment has been ordered by the court. He stated that the custodian of these funds is a clerk of court. His testimony as regards how the beneficiaries access this money is similar to that for pw2.

Pw7 told the court that in April 2013, he was approached by pw13 and one Mr. Chileshe - both officers of the Anti-Corruption Commission (ACC) stationed at Chipata who were seeking to verify issues pertaining to funds kept in the Judiciary Expenditure Account at ZANACO - Chipata. The officers produced photocopies of twenty – eight batches of payment vouchers for the period 2007 – 2009. They were marked exhibits p13 (a) – p13 (k) after having been identified and produced in evidence by pw7.

The two officers wanted to confirm the authenticity of the payments reflected on the exhibits p13 (a) – p13 (k). After checking the records, Pw7 established that the mentioned payments were genuine transfers sent from the judiciary headquarters. According to exhibits p13 (a) – p13 (k), the total amount of money that was transferred by the Judiciary headquarters into the mentioned Judiciary Expenditure Account is K3, 787, 986, 679.66.

Under cross-examination by Mr. Chikuta, Counsel for the Accused persons, Pw7 told the court that he is not aware that the High Court in the Eastern Province also receives money in the Client's Account which is not intended to be paid to litigants adding that he is not aware that officers of the Judiciary drew money from the Client's Account for operations of the Judiciary. Pw7 further stated that the money held in the Client's Account is not for the government but for litigants. As such, it is wrong for officers of the Judiciary to be paid imprest from the Client's Account with or without the knowledge of internal or external auditors.

Further under cross-examination, Pw7 told the court that according to exhibit pd1, the Chief Administrator was aware that an amount of K39, 500, 000.00 was drawn as imprest from the

Clients Account. Exhibit pd1 is a letter dated 18th November 2009 addressed to A2 by the Chief Administrator adding that the mentioned exhibit does not indicate that A2 is not supposed to draw imprest from the Client's Account. Quoting only the relevant portions, the contents of exhibit pd1 are as follows

it has been brought to my attention that an amount of K39.5 million was withdrawn in your name as accountable imprest from the High Court Client's Account. This is to direct you to retire the money. Duly completed retirement forms should reach my office by 27th November 2009.

Further, Pw7 told the court that he does not know the purpose for which the money indicated on exhibit pd2 was disbursed. However, he told the court that the money was paid out as special imprest to officers of the Judiciary listed on exhibit pd4 who include A1, A3 and A5 with various amounts. Exhibit pd2 is a letter dated 19th November 2009 addressed to A2 by the Chief Administrator, Mr. Peter L. Mwamfuli. It states as follows:

the above report has revealed that you disbursed K398, 263,150 special imprest to various officers including yourself during the above period. Unfortunately the special imprest has to date not yet been retired. This is to direct you to retire the imprests obtained starting with yourself and the other officers concerned. Details of unretired imprests outlining the names, cheque numbers and the amounts are in the attached list. I want the duly retirement forms to reach me by 27th November 2009.

Further under cross-examination, pw7 told the court that the amounts of money referred to in exhibits pd1 and pd2 arose from an internal audit report for the period January to December 2008. The mentioned audit report was marked exhibit pd3 after it was produced in evidence.

Pw7 added that the Chief Administrator's instructions contained in exhibits pd1 and pd2 were responded to by A2 through a letter. This letter was marked exhibit pd5 after it was produced in evidence. It reads as follows: **"kindly refer to your letters dated 18th and 19th November 2009 ...attached are copies of duly retired forms as outlined in the report and your letters"**. In turn, the Chief Administrator responded to exhibit pd5 by a letter dated 8th December 2009 herein marked exhibit pd6 after it was produced in evidence. The letter indicates that four of the officers (including A1) listed in exhibit pd4 had not yet retired the imprest. According to exhibit pd7, A1 is said not to have retired cheque no. 0012553 bearing an amount of K7, 160, 000.00 which is one of the cheques under these allegations. Pw7 added that according to exhibit pd6 as read together with exhibit pd4, A1 had retired special imprest paid to him on cheque nos. 001172, 000966 and 001180. Pw7 further told the court that the officers who have not been mentioned in exhibit pd6 are deemed to have retired their respective special imprest referred to in exhibit pd4. As regards the Accused persons, Pw7 stated that some of the documents signifying that they retired their special imprest are as follows:

1. a photocopy of a payment voucher dated 30th October 2009 herein exhibit pd8 after it was produced in evidence. Exhibit pd8 appears in the names of A4. It indicates that he is retiring special imprest in the sum of K2, 795, 000.00 which was paid in his name in order for him to pay allowances, reimburse transport costs and to buy refreshments for thirteen officers (including A1 –A3 and A5) who attended a Finance Committee Meeting on 30th October 2009. The mentioned officers signed a document that is attached to exhibit p8 in order to acknowledge receipt of the money that they were paid by A4. The mentioned sum of K2, 795, 000.00 was paid on cheque no. 001601 for which A4 is being

prosecuted. Pw7 told the court that exhibit pd 8 was audited adding that it was duly authorized for payment by the sub-warrant holder (A3) and other signatories.

2. A photocopy of a payment voucher dated 9th April 2009 herein marked exhibit pd9A after it was produced in evidence. Exhibit pd9A appears in the names of A4. It indicates that he is retiring special imprest in the sum of K7, 204, 000.00 which was paid in his name in order for him to deposit the mentioned amount into the bank account for a Mr. Goldwin Nyirenda (a driver in the Judiciary) who had travelled to Lusaka for official duties but got financially stranded in Lusaka because his cheque no. 001454 which was meant to be his subsistence allowance would take long to mature. Pw7 told the court that according to exhibit pd9D, the mentioned amount was deposited on 9th April 2009 in Mr. Goldwin Nyirenda's bank account held at Barclays Bank – Chipata branch. This money was intended to be a replacement for Mr. Goldwin Nyirenda's cheque no. 001454 which was deposited into Mr. Goldwin Nyirenda's mentioned bank account on 8th April 2009 in respect of his subsistence allowance when he travelled to Lusaka. According to exhibit pd9F, the mentioned amount of K7, 204, 000.00 was, on 20th April 2009, re-deposited into the Judiciary Expenditure Account held at Chipata. The money was paid on cheque no. 001455 for which A4 is being prosecuted. Pw7 told the court that exhibit pd 9A was audited adding that it was duly authorized for payment by the sub-warrant holder (A3) and other signatories.

Muthalimanja Ibac (pw8) is the Branch Manager for ZANACO at Chipata. He told the court that in November 2009, he was approached by officers of the ACC who were requesting for information concerning bank accounts for the Judiciary at his branch. The officers requested for the information on the strength of a form which however was not

shown to pw8 in court. Pw8 gave the officers the 164 cheques (herein marked exhibits p8 (a) – p8(e) for the year 2007 – 2009 that were drawn on the mentioned bank accounts (i.e. the Clients Account, the Judiciary Expenditure Account and the Judiciary Fines/Collection Account), the mandates for the accounts and statements of account for the period 2007 – 2009. The statements of account in respect of the Client's Account, the Judiciary Fines/Collection Account and the Judiciary Expenditure Account were marked exhibits p18, p19 and p20, respectively after having been identified and produced in evidence by pw8. As regards the Fines/Collection Account, pw8 told the court that it was only intended for deposits and not withdrawals adding that whatever was deposited in this bank account, was transferred to the Bank of Zambia the same day.

Turning to the Judiciary Expenditure Account, pw8 told the court that the requisite statement of account reflects all the transactions which were made on the account. Pw8 demonstrated to the court the number of cheques and payees who included A1, A2 and A3.

Pw8 stated that in accordance with the signing mandates, the signatories for the Client's Account were Lewis Mwenya, Maurien Zulu, Sydney Mumba, Christopher Malunga and Plaston Moyo. The signatories to the Judiciary Expenditure Account were Lewis Mwenya, Maurien Zulu, Malunga Christopher, Plastone Moyo and Mary Daka.

John Muchinda (pw9) is the proprietor of a business entity called Shachitoya Contractors. He told the Court that during the period 2007 – 2008, Shachitoya Contractors was contracted by the Judiciary in the Eastern Province to rehabilitate Nyamphande Local Court situated in

Nyimba district. The contract sum was K170, 000, 000.00 (old currency). The company was paid by cheques after a successful completion of the works.

Patrick Musonda Changwe (Pw10) is the proprietor of a construction business entity called 'Drive Well Contractors'. He told the Court that in July 2014, Pw13 summoned him to offices for the ACC in order to inquire about contracts his business entity was engaged in during the years 2006 and 2007. Pw10 stated that during the year 2006, Drive Well Contractors was contracted by the Buildings Department to rehabilitate Mpezeni Local Court at a price of about K38, 000, 000. 00 (old currency). Pw10 also told the court that during the year 2007, Drive Well Contractors were awarded a tender by the Permanent Secretary for Eastern Province to rehabilitate Chikube Local Court at a price of K157, 000, 000. 00 (old currency). Drive Well Contractors was paid by cheque and electronic bank transfer after a successful completion of the works adding that in terms of the payment by cheque, he collected the payments from A5.

Harry Banda (pw11) owns a construction business entity called Pegmark Limited. He told the Court that in 2007, his company and another called Modern Construction was awarded a contract to re-construct Ndake Local Court situated in the Eastern Province. The total contractual price was K 239, 000, 000.00 (old currency). Pw11 told the court that his company has not yet been paid an amount of K19, 000, 000.00 after completion of the works because of lack of reconciliation as regards the money that is due to the two companies which constructed the Court.

Sitali Mazila (Pw12) is an Assistant Tax Collector under the Zambia Revenue Authority (ZRA) stationed at Chipata in the Eastern Province. He told the court that his duties include collecting revenue and accounting for the collected tax. He stated that during the year 2010, he was assigned to inspect the collection of withholding tax from employees of government institutions in Chipata. He stated that his visit to the Judiciary did not yield positive results because the concerned official, an accountant, could not avail him the required data. Pw12 could not recall the mentioned accountant. He said that eventually he was visited by officers of the ACC inquiring about his findings relating to the Judiciary. In response, Pw12 gave the ACC data he collected from the computer system kept by the ZRA. The mentioned data was contained in documents which were marked exhibits p21(a) – (d) after they were identified and produced in evidence by Pw12. Pw12 stated that according to exhibit p21 (a) – (d) the Judiciary in Chipata did not pay withholding tax adding that this was the case with the Judiciary in many provinces.

Brian Mbewe (Pw13) is the case officer in this matter. He told the court that he lodged investigations into the subject allegations following a complaint to the effect that some employees of the Judiciary in the Eastern Province were misappropriating money belonging to the government by way of making fraudulent payments to themselves adding that the mentioned payments had no supporting documents and that the resulting imprest was not retired. In inquiring into the allegation, Pw13 interviewed some employees of the Judiciary who included Pw2. His interview with Pw2 centered on the operations of the three bank accounts held by the Judiciary at ZANACO – Chipata Branch namely the High Court General Account or the Client's Account (exhibit p18), Judiciary Expenditure Account

(exhibit p20) and the Fines or Collection Account (exhibit p19) whose respective statements of account he collected from ZANACO – Chipata branch. The statements covered the period January 2007 – December 2009. After obtaining the statements of account, Pw13 requested from pw2 and was given the following documents: a receipt book (exhibit p1), cheque book (exhibit p3), a cash book (exhibit p22) - all relating to the Client's Account and a receipt book (exhibit p4) relating to the Fines Account.

Pw13 further told the court that he requested from A2 and was given several documents relating to the Judiciary Expenditure Account. These are as follows: a cheque register (exhibit p23).

Pw13 told the Court that his analysis of the documents he was given relating to the Clients Account disclosed that there were many deposits of money made in that bank account from different individuals and that some payments were made to employees of the Judiciary particularly A1 and A2 who were paid amounts of K22, 000, 000.00 (old currency) and K43, 000, 000.00 (old currency), respectively. Pw13 stated that the payments made to A1 and A2 from the Clients Account are illegal because the beneficiaries to this account are litigants in whose favour the monetary awards were made by the court. Pw13 got this information from pw2 and pw7. He added that the mentioned payments made to A1 and A2 were neither supported by relevant documents which include applications for imprest, payment vouchers and documents intended to retire the imprest. Pw13 further found that the signatories to this bank account for the period in issue, were A1, A2, A3 and Maurien Zulu, among others. This information was obtained from the mandate file (exhibits p10 and p17) kept at ZANACO –

Chipata branch. He stated that according to the mandate file, A1 and A2 belonged to the same signing panel – the accounting panel – adding that the duo signed on the cheques which were intended for their benefit. He further noticed through the cash book (exhibit p22) that some transactions were missing.

I must hasten to state that pw13's testimony as regards the operations of the three bank accounts mentioned above is based on and therefore similar to that for pw1, pw2 and pw7. For obvious reasons therefore, I shall not recite it as far as this aspect is concerned.

Turning to the High Court Fines Account, Pw13 analysed the transactions in this account using the Fines Receipt Book (exhibit p4). He directed his mind to the period 18th August 2008 – May 2009 because there was an indication in exhibit p1 that on 18th August 2008, Maurien Zulu who has been mentioned above, handed over management of the Fines Account to A1 adding that pw2 confirmed the handover to him. Pw13's analysis disclosed that there were several payments made by different individuals (who included a Mr. Joe Banda who was fined for causing death by dangerous driving) which were recorded in exhibit p4 up to around May 2009. However, several of those payments were not deposited and therefore not reflecting in the Fines Account. According to Pw13, an amount exceeding K29, 000, 000.00 was collected from the period A2 took management of the Fines Account from Maurien Zulu. However, out of this amount, only an amount of K4, 000, 000.00 appeared in the statement of account adding that based on information he obtained from pw2 and pw7, fines should be banked within a period of 24 hours once collected.

It is Pw13's testimony that during investigations, he received information indicating that Joe Banda who has been mentioned above, had been given back the money he had paid as a fine for causing death by dangerous driving. When interviewed, Mr. Joe Banda told pw13 that he had sent his wife (Jessy Banda – pw3) to pay the fine (an amount of K16, 000, 000.00 (old currency) on his behalf. When interviewed, pw3 told pw13 that she paid the K16, 000, 000.00 to A1 in two instalments; the first instalment was in the sum of K12, 000, 000 whereas as the other instalment was in the sum of K4, 000, 000.00. The payments were signified by two receipts which were marked exhibits p5 and p24, respectively after having been produced in evidence. Pw 13 told the court that although the two payments were made within the same period, the K12, 000, 000.00 is not reflecting in the statement of account for the Fines Account. Here I must state that I have examined the two receipts in exhibit p4 referred to by Pw13. The receipt indicating the amount of K12, 000, 000.00 is dated 18th May 2009 whereas that for the amount of K4, 000, 000.00 is dated 20th May 2009. They bear receipt numbers 1119566 and 1119567, respectively. I have also examined exhibit p19, the Fines Statement of Account. Amongst three other deposits, the statement reflects an amount of K4, 000, 000.00 for the date of 20th May 2009. However, the specific amount of K12, 000, 000 does not appear on 18th May 2009 or on any date thereafter.

Turning to the Judiciary Expenditure Account, pw13 told the court that he analysed the requisite statement of account (exhibit p20) with particular reference to the transactions involving A1-A5 for the period 2007 -2009. He discovered that the accused persons received numerous payments from the mentioned account adding that 169 of such transactions were

not recorded in the cheque register. Here, I must state that a perusal of exhibit p20 discloses that many payments were made to the accused persons, among other people.

Pw13 stated that he recorded the mentioned 169 transactions in his report to his superiors. The report was marked exhibit p25 after he identified and produced it in evidence. He told the Court that according to exhibit p13, an amount of K115, 138, 750.00 was paid to A1, an amount of K820, 458, 000.00 was paid to A2, an amount of K957, 266, 866.24 was paid to A3, an amount of K70, 654, 178.00 was paid to A4 and an amount of K200, 067, 000.00 was paid to A5 during the period in question. Further, according to exhibit p25, Pw13 told the court that A1 – A3 and A5 were signatories to the Judiciary Expenditure Account adding that A2 and 3 were signatories of the mentioned bank account throughout the mentioned period.

Pw13 further told the court that when approached, A2 could not furnish him with payment vouchers relating to the mentioned 169 transactions stating that they had been collected by internal auditors from Lusaka. However, when approached, Pw1, the auditor in charge at the Judiciary in Lusaka, denied having collected any documents relating to the Judiciary Expenditure Account or any other account at Chipata adding that pw1 told him that his unit did not conduct a comprehensive audit of the accounts due to shortage of personnel. Having not been availed the requisite documents supporting payment on the 169 cheques, pw13 decided to check for the mentioned documents from the accused's personal employment files. However, the files had no such documents.

Pw13 also told the court that he interviewed pw7 as regards to the operations of the three bank accounts held by the Judiciary in the Eastern province. His testimony about this aspect is based on and therefore similar to that for pw7. For obvious reasons, I shall not recite it except to add that pw7 gave pw13 different photocopies of payment vouchers signifying the disbursement of funds into the Judiciary Expenditure Account. The mentioned vouchers were marked exhibits p13 (a) – (j), p14 and p15 after they were identified and produced in evidence. Pw13 added that after he analysed the Judiciary Expenditure Statement of Account, he discovered that the total amount that was disbursed into this account by way of payment vouchers and bank transfers exceeded K4.8 billion (old currency).

It is also pw13's evidence that he obtained 164 cheque leafs from pw8 at ZANACO relating to the accused's disputed payments from the Judiciary Expenditure Account adding that he also obtained 12 cheque leafs (exhibits p8(a) – (b)) relating to the Clients Account drawn in favour of A1 and A2. Thereafter, he subjected all the cheque leafs he obtained, to analysis by a handwriting expert at the Zambia Police Service Headquarters who found that the payees wrote their names and signed at the back of their respective cheques. These were different individuals who included A1 –A5 adding that A1-A5's roles on the mentioned cheques was either that of payee or author. These results were recorded in exhibit p7 – the Zambia Police Photographic Album.

Pw13 told the court that additionally he collected from A2 cheque books in respect of the Judiciary Expenditure Account marked exhibits p26(a) – p26(j). He stated that he analysed these transactions in connection with the transactions which he deemed suspicious

whereupon he found that the full details of the mentioned suspicious transactions were not recorded in the folios of the respective cheques. Pw13 gave examples of cheque nos. 1123, 1137 1131, 1138, 1144, 1146, 1149, 1152, 1154, 1156, 1161, 1774, 1184, 1187, 1189 and 1194 in exhibit p26(g). According to pw13, the missing details include the names of the payees and the purpose for which the cheques were issued out, a position which is contrary to what is ideal as explained to him by pw7. A perusal of these cheques indicate that their folios are blank it however to add that all the folios of cheque leafs in exhibit p26 (g) are blank.

Pw13 also told the court that most of the suspicious transactions were not recorded in Cheque-Issuing-Registers (that include exhibit p27) which he obtained from A2. He demonstrated to the court that the cheques which are missing in the cheque registers include cheque nos. 1595, 1600, 1601 (which are part of exhibit p8 (c) issued in favour of A4 and signed by A2 and A3; cheque nos. 1603 (which is part of exhibit p8 (a)) issued in favour of A5 and signed by A2 and A3 Plastone Moyo; cheque no. 1592 (which is part of exhibit p8(g)) issued in favour of A2 signed by A3 and A5. To the contrary, full details of the cheques issued to individuals other than A1 – A5 were recorded in the cheque issuing registers.

Pw13 further told the court that after he analysed the mentioned suspicious transactions alongside the cheque register (exhibit p27) and the statement of account for the Judiciary Expenditure Account, he discovered that the transactions were not supported by relevant documents i.e. documents relating to applications for and the purpose of the imprest, payment vouchers and documents signifying the retirement of the mentioned imprest.

Under cross-examination, pw13 told the court that he records whatever he collects from suspects during investigations on an ACC Form 12 and that the form is signed by the person from whom the documents are collected. Similarly, he recorded on the mentioned form, the documents which he collected from A2 during his investigations into these allegations. He added that according to exhibit pd10, an ACC Form 12, pw13 was, on 10th October 2010 returning to a Mr. Champion Phiri, payment vouchers relating to the Judiciary Expenditure Account held at ZANACO – Chipata Branch. Exhibit pd10 reads as follows: **“payment voucher file for the Judiciary Expenditure Account no. 0600220004321 for period January 2009 – August 2009”**.

Pw13 further told the court that the Clients Account is also called the High Court General Account adding that he did not investigate the purpose of this account. He denied that the Client's Account in Chipata also used to receive other funds from Judiciary headquarters not necessarily intended for the benefit of litigants. When referred to the dates of 26th January 2007, 5th February 2007, 6th February 2007, 3rd April 2007, 1st July 2009 in the statement of account for the Client's Account, pw13 stated that the account was credited with amounts of K5, 000.00, K50, 000, 000, K3, 500, 000.00, K3, 500, 000.00, K14, 800, 000.00, respectively as a result of deposits from sources and purposes he did not inquire into. The deposits were from account nos. 08461, 000171, 0670220000001786, 0670220000001439, respectively. Pw13 expressed ignorance when asked if the mentioned deposits were made by the Judiciary Headquarters Expenditure Account for purposes of funding activities for the High Court in Chipata. Pw13 further told the court that he collected payment-voucher files pertaining to

various payments for the period 2007 – 2009 adding that he did not produce these files to the court.

Further under cross-examination, pw13 told the court that when he investigated into this matter, he was not aware that apart from an employee's personal file, other payments in favour of the employees of the Judiciary could be processed on files which include the following: policy file, the stationery file, court inspection file, labour day celebrations file, court circuiting and sessions file, tours and inspection file, accommodation file, budgeting policy file, office equipment policy file, ceremonial opening of High Court file adding that such files were not produced before the court and as such, he does not know the type of payments that are lying on the mentioned files. Pw13 told the court that he did not see exhibit pd13 which is a payment voucher dated 22nd February 2008 appearing in the names of A5 for which the imprest that was sought was for the purpose of **“subsistence allowance to the above named officer and others and for the purchase of fuel for court inspection.”** The request on the payment voucher was approved by the Provincial Local Courts Officer. Pw13 stated that the mentioned voucher was accompanied by a letter written by A5 and addressed to the Principal Resident Magistrate requesting for the mentioned payment. The mentioned request was marked exhibit pd11 (h) after it was identified and produced in evidence. Consequently, cheque no. 000580 was issued and the money thereon retired using an acquittal sheet herein marked exhibit pd 11(i).

Pw13 further told the court that A5 was paid subsistence allowance in the amount of K7, 500, 000.00 on the basis of exhibit pd12 (d), an accounts form 44A adding that cheque no. 001089

which is part of exhibit p8((a), was issued as a result. The claim was authorized by the Principal Resident Magistrate for Chipata and the purpose of the claim was to inspect local courts in Chipata and Chadiza Districts. The payment was acquitted using an acquittal sheet which was marked exhibit pd12 (b) after having been identified and produced in evidence.

Pw13 further told the court that exhibit pd14 are claim forms for subsistence allowance which he said he did not see during his investigations in this matter. The narration as regards the purposes of the money was **“accountable imprest for maintenance works, stationery at Chipata High Court”**. Subsequently cheque nos. 000966, 001180, 000928 which are part of exhibit p8 were issued.

Pw13 further told the court the revenue that was collected on behalf of the Judiciary at Chipata would be recorded on deposit slips before being deposited in the bank account adding that the officials who were responsible for recording the collected revenue into receipt books included A1 and Maurien zulu, at the material time. This, pw13 said is in accordance with the receipt book – exhibit p4. He told the court that as regards the subject Fines account, he was not availed any deposit slip in order for him to establish the official who used to deposit the fines which were collected after A1 took over the receipt book from Maurien Zulu from September 2008 – December 2009. It is pw13's testimony that during the mentioned period that A1 took over from Maurien Zulu, a total amount of K29, 200, 000.00 was collected however, according to the requisite statement of account, only an amount of K5, 600, 000.00 was deposited. The rest of the money that was recorded in the receipt book (exhibit p4) had no corresponding entries in the statement of account. However, pw13 told

the court his analysis of exhibit p4 disclosed delayed banking in some instances and also that it was possible that there were collective deposits of the fines into the Fines/ Collection Account as opposed to individual deposits.

Pw13 further told the court that the Audit Report for the period ending 31st December 2008, does not indicate that the fines collected by the Judiciary at Chipata were misappropriated adding that the only irregularity that is disclosed in the report is delayed banking of the fines.

CASE FOR THE ACCUSED PERSONS

The above is evidence tendered on behalf of the prosecution. Turning to the defence, A1, A2, A4 and A5 gave sworn statements. A3 gave an unsworn statement - he is perfectly entitled to adopt this position and this does not alter the burden of proof placed on the prosecution. None of the accused persons called a witness. Again, I must state that they have a right not to call witnesses and this does alter the burden of proof placed on the prosecution.

A1 (Dw1) told the court that during the period in issue, he was employed in the judiciary in the position of Judge's Marshal. However, he was given the training of a clerk of court. He stated that his duties included preparation of High Court circuit sessions. As regards the first count, A1 told the court that when he joined the Judiciary, the Clients Account in the Eastern Province was being used as an Expenditure Account. He stated that although a High Court General Account was opened in 2005, the Clients Account continued receiving deposits for specific judicial operations from the Judiciary headquarters in Lusaka adding that all the imprests which were paid in his name from the mentioned Clients Account, were legally

authorized and paid to him using policy files and other files for purposes of executing activities on behalf of the Judiciary and that subsequently, the imprest was retired. DwI told the Court that in order to prove that he was entitled to draw imprest from the Clients Account, the Controlling Officer for the Judiciary - the Chief Administrator - wrote a letter (exhibit pd1) to him directing him to retire the imprest he was paid from the Clients Account. DwI told the court that he retired the mentioned imprest and this could be confirmed by the fact that he did not receive any further query from the Chief Administrator. He told the court that the statement of account for the Client's Account (exhibit p18) disclose that other officials of the Judiciary also used to draw imprest from this account. He gave the following examples: an amount of K1, 000, 000.00 paid out on 1st August 2008 to one Jethro Thole – then a Court Usher; an amount of K2, 300, 000.00 paid on 20th January 2009 to Chongo Mpundu- then a Clerical Officer at Chipata High Court; an amount of K4, 900, 000.00 paid out on 29th January 2017 to M. Zulu - also an employee of the Judiciary at Chipata. DwI wondered why the other officials were not charged for drawing the imprest from the Clients Account.

DwI told the court that the statement of account for the Clients Account discloses that the Clients Account used to receive funds intended for operations of the Judiciary apart from hosting funds for litigants. He gave examples of such deposits as follows: an amount of K4, 000, 000.00 deposited on 23rd October 2007 adding that the money was withdrawn by DwI after he made a request which was approved by the Assistant Registrar, a Mrs. Lwenje. DwI told the Court that the Judiciary was not a client to the Clients Account. He added that the following cheque-deposits were made in the Clients Account by the Judiciary headquarters

from the High Court General Account: K1, 340, 000.00, K1, 280, 000.0, K640, 000.00, K500, 000.00, K 560, 000.00, K3, 163, 941.67, K3, 065, 000.00, K17, 000, 000.00, K3, 800, 000.00, K4, 000, 000, K1, 627, 310.00, K600, 000.00, K33, 457, 212.78 on 18th November 2007, 11th December 2007, 12th December 2007, 20th December 2008, 17th March 2008, 13th May 2008, 31st July 2008, 8th August 2008, 18th August 2008, 21st August 2008, 21st November 2008, 3rd December 2008, 11th November 2009, respectively. DwI disputed the prosecution's evidence to the effect that the mentioned deposits were intended for the benefit of litigants because cheque deposits in favour of litigants in the Clients Account are not allowed. He stated that the officers responsible for receiving and receipting the fines in the receipt book (exhibit p1) from people who have been fined are the Judge's Marshal and the Assistant Registrar if the Marshall is not available. DwI told the Court that audit reports for the period in issue relating to the Clients Account did not disclose that funds were stolen.

Turning to the fifth count relating to the Judiciary Fines Account, DwI told the court that as a Judge's Marshal, he used to receive and receipt fines. In his absence, his workmates (particularly Chongo Mpundu, Maurien Zulu and Azif Banda) would do so. The receipt book used in receipting the fines for the period in issue is exhibit p4. In either instances however, the money would eventually be deposited in the Judiciary Fines Account adding that Chongo Mpundu made many of such deposits even the fines which were collected by DwI as deposit slips (kept by the High Court at Chipata and the Bank) and the Deposit Book, would show. He told the Court that the mentioned Deposit Book and the deposit slips attached thereto, were collected by a Mr. George Kanguya, an officer of the ACC who issued out an ACC Form 12 showing the documents he collected from the Judiciary at Chipata. The mentioned

ACC Form 12 was marked exhibit pd19 after having been identified and produced in evidence by Dw1. Exhibit pd19 indicates that the following documents were received from Sydney Kasunga

a Zambia National Commercial Bank deposit slip for K4, 000, 000.00 dated 20th May 2009- Judiciary Revenue A/C 0600220000004752; ZANACO Deposit slip for K1, 800, 000.00 dated 20th May 2009 – Judiciary Revenue A/C and ZANACO Deposit slip for K8, 500, 000.00 dated 20th May 2009.

Dw1 added that George Kanguya collected more documents than is reflected on exhibit pd19 except that he only recorded what he was interested in and was therefore selective in listing the documents on exhibit pd19. Dw1 stated that the deposits made in the Fines Account were not in respect of the individual receipts in exhibit p4 but rather, they were made up of the total fines collected at the time of the deposit.

Turning to the allegation concerning non-accountability for the K12, 000, 000.00 that was paid as a fine by one Joe Banda, Dw1 told the court that the money was receipted on exhibit p5 by Azif adding that it was deposited in the Fines Account by Chongo. He stated that to prove that the deposit was made, Chongo produced and gave the requisite bank deposit slip to Dw1. The deposit slip showed more money than the K12, 000, 000.00 an indication that more fines had been collected and banked. He told the court that the requisite bank deposit slip was amongst the documents which were collected by Mr. Kanguya and reflected on the ACC Form 12.

Dw1 added that the only query arising from the audit reports is that of delayed banking. The requisite audit report was marked exhibit p20 after it was identified and produced in evidence by Dw1 and the aspect of delayed banking appears at page 25. Quoting only the relevant portions, page 25 of exhibit p20 states as follows:

Delayed Banking – Chipata High Court

A review of the internal audit report referenced 71/22/1 dated 28th April 2009 revealed that there was a delay of over four (4) months in banking revenue amounting to K3, 900, 000.00 collected between September and October 2008 despite the proximity of the banking facilities contrary to Financial Regulation 129(1).

As regards the sixth and seventh counts relating to the Judiciary Expenditure Account, Dw1 stated that the money from this account was duly paid to him as imprest upon approval of authorized signatories adding that the imprest was duly retired. He told the court that he has no documents to prove that the imprest was expended on judiciary activities and that it was duly approved and retired because during his tenure of office, neither the judiciary nor the auditors raised any query against him except for the directive by the Chief Administrator on exhibit pd1 requiring him to retire the imprest which he eventually retired. He told the court that the documents signifying the retirement of the imprest (payment vouchers) had been collected by Pw13 who later handed them back to a Mr. Champion Phiri then an Accountant at Chipata. Dw1 state that proof of the mentioned return of the documents is an ACC Form 12 signed by Pw13 and Champion Phiri. It was marked exhibit pd 10 after it was identified and produced in evidence by Dw1. Exhibit pd 10 states as follows

the following items have been returned to Champion Phiri...payment voucher file for the Judiciary Expenditure Account no. 0600220004321 for the period January 2009 – August 2009.

Dwl further told the Court that documents requesting for and retiring the imprest paid to him on cheques collectively denoted as exhibit p8'E' are on the policy file kept in the registry of the Judiciary by an assistant registrar.

Further under cross-examination, Dw1 admitted that he received an amount of K12, 000, 000 .00 (recorded in exhibit p5) from a Mrs. Joe Banda as payment for a fine but added that the money was banked by a Clerical Officer, Mr. Mpundu. The mentioned amount is receipted on exhibit p5. Dw1 further stated that according to his training in financial regulations, he was responsible for the fines recorded in exhibit p5. Dw1 further stated that for purposes of audit, the documents which the auditors examine are dependent on the scope of the audit adding that such documents would be supplied by accountants. He added that the information concerning unretired imprest which led to a written directive by the Chief Administrator on exhibit pd1 to retire the imprest came as a result of the information that was supplied by A3 to the auditors.

Further under cross-examination, Dw1 stated that as a signatory, he was entitled to sign as a signatory, on a cheque that was drawn in his name e.g. cheque no. 000025 and 000026 in exhibit p25 adding that what is discouraged is for oneself to approve his or her own payment.

A2 (Dw2) told that during the period in issue, he was a Provincial Accountant in the Judiciary stationed in Chipata District. He stated that his duties included the following: processing of payments, inspecting and checking of revenue, checking accounts books under the custody of clerks of courts in the Eastern Province and requisition of funds for various judiciary activities from the Judiciary Headquarters. He stated that the funds which he used to requisition used to come either through the Judiciary Expenditure Account or the High Court General Account / Clients Account by way of cheque deposits. Dw2 told the Court that he was the first Accountant to work in the Judiciary in the Eastern Province. He reported for duty for the first time at Chipata in 2003. He stated that at the time he reported, the Judiciary had no Expenditure Account in the Province. Therefore funding used to be remitted through the High Court General Account. He said that the Expenditure/Clients Account was opened in 2005 but even then, Judiciary Headquarters continued to remit some money (for judiciary activities e.g. ceremonial opening of the High Court through the High Court General Account. He also stated that the Judiciary in the Eastern Province started receiving funding through the Expenditure/Clients Account the moment it was opened and during the period in issue. He said that officers of the Judiciary would be paid imprest from such funding adding that it would be his duty to ensure that the imprest was retired and the documents supporting the payment and retirement of the imprest, would be sent to the Chief Administrator at Judiciary Headquarters.

Dw2 told the court that the personnel empowered to approve applications for imprest in the province were the Principal Resident Magistrates, the Senior Resident Magistrates, Resident

Magistrates and the Provincial Local Courts Officer (PLCO) whom he said was a sub-warrant holder - who was A3 at the material time.

He told the Court that he was legally entitled to draw imprest from the High Court General/ Clients Account to use in the operations of the Judiciary adding that this comprised money that was remitted in the Account by the Judiciary Headquarters for purposes of court operations. He highlighted some of the remittances on the statement of account (exhibit p18) as follows: amounts of K3, 065, 000.00, K17, 000, 000, K4, 000, 000, K26, 300, 000.00, deposited on 31st July, 2008, 8th August 2008, 7th November 2007, 23rd August 2007 and 5th February 2007, respectively.

Dw2 told the Court that the imprest he drew from this bank account was duly authorized and retired. In order to confirm that he was legally entitled to draw imprest from the Client's Account, Dw2 told the court that he was written letters (exhibits pd1 and pd2) by the Chief Administrator, Mr. Mwamfuli, directing him and other officers of the Judiciary who had drawn imprest from the Clients Account to retire the imprest. He stated that exhibits pd1 and pd2 were generated as a result of an audit report (exhibit pd3). Dw2 told the Court that exhibit pd3 contained a list (exhibit pd4) of names of officers who did not retire the imprest. Dw2 stated that he caused the officers mentioned in exhibit pd4 to retire the imprest through the documents which he send to the Chief Administrator under cover of a letter marked exhibit pd5. He told the court that in his letter herein marked exhibit pd6, the Chief Administrator acknowledged receipt of the documents through which Dw2 retired the

imprest indicated in the Chief Administrator's previous letters (i.e. exhibits pd1 and 2).

Exhibit pd6 states as follows

I make reference to your undated minute. This is to inform you that Marriam Nachalwe, Mary Daka, Katyettye Willard and Sydney Kasunga have not retired their imprest...this is to request you to cause imprest to be retired by the above officers.

Dw2 stated that despite having retired the imprest in line with the Chief administrator's directives in exhibits p1 and p2, he has been charged with the offence of stealing the money indicated on the cheques whose imprest he had retired to the Chief Administrator

Dw2 also told the court the money he was paid from the Judiciary account under counts 2, 3, 7, 9, 10 and 11 was duly authorized and paid to him as imprest in order to enable him execute judiciary functions adding that he duly retired the imprest. He added that similarly, other officers of the Judiciary who include the accused persons drew imprest from the Clients Account and retired it. He gave an example of cheque no. 001601 in exhibit p8c which A4 is accused to have stolen in this matter. Dw2 told the court that A4 was duly paid the imprest which he retired by paying allowances and buying refreshments for officers of the Judiciary who were assigned to perform some official duties.

Dw2 told the court that the requisite documents supporting the imprest on cheques forming part of exhibit p8D and for the period January 2007 – August 2009 were collected by Pw13 and were recorded on an ACC Form 12 (exhibit pd10).

Dw2 also told the court that the money on cheques no. 000928, 001043, 001079, 001161 in the sums of K6, 600, 000.00, K22, 320.00, K20, 925, 000.00, K83, 700, 000.00, respectively which are part of exhibit p8D and which he is alleged to have stolen was, on the contrary, used to execute judiciary activities and duly retired using documents marked exhibit pd 14D, 14E, 22, 23. Here, I must state that indeed the mentioned cheques appear in the names of Dw2. Furthermore, a perusal of the record of proceedings discloses that payment and retirement of the mentioned amounts is supported by exhibits pd14, pd22 and pd23 and that the money was expended on judicial duties. However, according to page 44 of exhibit p25, these are some of the sums of money alleged to have been stolen by Dw2.

Under cross-examination by Mr. Mayembe, Dw2 told the Court that exhibit pd10 shows that what Pw13 collected from the Judiciary was a payment voucher file for the Judiciary Expenditure Account. Dw2 added that the Chief Administrator's letter in exhibit pd2 refers to the audit report for the period January – December 2008 and not 2007 and 2009. Dw2 further stated that during the period in issue, the custodian of the documents was himself.

Dw2 stated that it was his duty to ensure that procedure as regards issuance of cheques was adhered to and that funds were properly accounted for.

A3 (Dw3) gave an unsworn statement. He is perfectly entitled to adopt this option. He admitted having been employed as Provincial Local Courts Officer for the Eastern Province during the material time. He retired from the Judiciary on 30th April 2010. He stated that his other position in the Judiciary in the province was that of sub-warrant holder whose

responsibilities included managing funds for the Judiciary, authorizing and approving payments to judiciary officers going on duty and being a signatory to the cheques that were drawn on the Judiciary Accounts in the Province. He denied the allegations maintaining that pwl's audit did not disclose theft of the funds. He added that none of the witnesses for the state accused him of having stolen the money. He wondered why other officers of the judiciary (particularly Mary Daka, Maurien Zulu and Christopher Malunga) who signed as signatories on the cheques which are subject of these proceedings have not been charged. He stated that all the payments which are subject of these allegations were duly authorized, the money expended on judiciary activities and retired. He told the court that he authorised or approved payments because he was legally mandated to do so.

A4 (Dw4) told the court that he was a Court Clerk stationed in Chipata District in the Eastern Province during the period in issue. Crucial to this case, Dw4, told the court that his duties included assisting the Provincial Accountant prepare payment vouchers, write cheques and any other duties which his superiors would assign him. He stated that the money that he is alleged to have stolen in this case was duly authorized and paid to him as imprest in order to enable him execute official duties. He gave an example of cheque no. 001601 (in exhibit p8 C) in the amount of K2, 795, 000.00 which he is alleged to have stolen. Dw4 told the court that on the contrary, the money on the mentioned cheque was paid to him as imprest intended for allowances to be paid to officers who attended a Finance Committee meeting that was chaired by Hon. Lunda then Principal Resident Magistrate. Dw4 stated that the mentioned payment was dully authorized and utilized for the intended purpose as attested by supporting documents which were collectively marked exhibit pd8 after they were identified and

produced in evidence by Dw4. Exhibit pd4 comprise an application letter written by Dw4 requesting for the mentioned payment, bus tickets and receipts in respect of food staffs and a list of names and signatures of people. Further, the application indicates that it was approved. Dw4 gave the other example of cheque no. 001455 in the amount of K7, 204, 000.00 which he is also alleged to have stolen. He stated that on the contrary, the money on the mentioned cheque was paid to him as imprest intended to be deposited in a Mr. Godwin Nyirenda's bank account. Mr. Nyirenda was a driver for the Judiciary stationed at Chipata who had travelled to Lusaka for official duties but got financially-stranded there because cheque no. 001454 that was issued to him by the Judiciary in order to provide for his subsistence allowance, would take long to mature. In order to save Mr. Nyirenda, management decided to issue the mentioned cheque to Dw4 in the same value as that which was issued to Mr. Nyirenda. In turn, Dw4 would encash it and deposit the money into Mr. Nyirenda's bank account. Dw4 stated that when Mr. Nyirenda's cheque matured, he refunded the money which was later re-deposited in the Judiciary Expenditure Account from whence cheque no. 001455 which was paid to Dw4, was drawn. He stated that this transaction is supported by documents which were marked exhibits pd9A -9G after they were identified and produced in evidence by Dw4. Here, I must state that according to exhibits pd9A – 9G, the mentioned cheque was duly authorised and issued to Dw4 as imprest for purposes of replacing Mr. Nyirenda's cheque. The mentioned exhibits further disclose that the money was eventually re-deposited into the judiciary expenditure account. Suffice it to add that as stated at page 49 of exhibit p25, the money on cheque no. 001454 is part of that which Dw4 is alleged to have stolen in this case.

It is Dw4's testimony that he has never been queried by his superiors over non-retirement of imprest. Dw4 stated that the exhibits referred to above, are the only ones he could manage to obtain but added that the other documents supporting his testimony that he was duly paid the money he is alleged to have stolen and thereafter retired the imprest, are kept by the accounts office at Chipata.

A5 (Dw5) told the court that he was posted to Chipata in 2005 in the position of Court Clerk in the Judiciary, where he worked under the supervision of the Principal Resident Magistrate – Mr. Malunga, Provincial Local Courts Officer, the Local Courts Officer (a Mrs. Daka) and the Provincial Accountant adding that he became a signatory to the Judiciary Expenditure Account domiciled at Chipata in 2009. He told the Court that he did not steal the money he is alleged to have stolen under count no. 11 adding that the stated money was duly paid to him as imprest in order to enable him execute his official duties and that the imprest was later retired. Dw5 gave the example of cheque no, 000935 (in exhibit p8A) in the amount of K3, 600, 000.00 which he is alleged to have stolen. He stated that on the contrary, the mentioned cheque was duly authorized by the sub-warranty holders Hon. Malunga (Principal Resident Magistrate) and the PLCO (A3)), paid to him as imprest and was later retired. He stated that this transaction is supported by an official accounting document. The mentioned document was marked exhibit Pd24 after it was identified and produced in evidence by Dw5. The stated exhibit indicate that the mentioned payment was duly paid to Dw5 as imprest for purposes of executing official duties and was later retired.

The other example Dw5 gave is that of cheque no. 1089 in exhibit p8A in the amount of K7, 500, 000.00 which again he said he is alleged to have stolen. He stated that on the contrary, the mentioned cheque was duly authorized by the sub-warranty holders Hon. Malunga (Principal Resident Magistrate) and the PLCO (A3)), paid to him as imprest and was later retired. He stated that this transaction is supported by documents. The mentioned documents were marked exhibits pd12A – 12D after they were identified and produced in evidence by Dw5. Exhibits pd12A-pd12D indicate that the mentioned money was duly paid to Dw5 as imprest for purposes of executing official duties and later retired

The other example Dw5 gave is that of cheque no. 001603 in exhibit p8A which again he said he is alleged to have stolen. He stated that on the contrary, the mentioned cheque was duly authorized by the sub-warranty holders Hon. Collins K. Lunda (Principal Resident Magistrate) and the PLCO (A3)), paid to him as imprest and was later retired. He stated that this transaction is supported by documents. The mentioned documents were marked exhibits pd25A –25D after they were identified and produced in evidence by Dw5. Exhibits pd25A-pd25C indicate that the mentioned payment was duly paid to Dw5 as imprest for purposes of executing official duties and later retired.

The other example which Dw5 gave is that of cheque no. 000991 in exhibit p8A in the amount of K30, 000, 000.00 which again he is alleged to have stolen. He stated that on the contrary, the mentioned cheque was duly authorized by the sub-warranty holders Hon. Collins K. Lunda (Principal Resident Magistrate) and the PLCO (A3)), paid to him as imprest in particular to be expended on labour day celebrations for the year 2008 and was

later retired. He stated that this transaction is supported by documents. The mentioned documents were marked exhibits exhibit pd27A –27C after they were identified and produced in evidence by Dw5. Exhibits pd26A-pd26C indicate that mentioned payment was duly paid to Dw5 as imprest and later retired.

Dw5 added that he only signed as signatory on cheques when he was appointed as signatory adding that he signed because he was legally mandated to do so and therefore, he should not be taken to have stolen the money on the cheques. He stated that it is for this reason that other signatories who signed (particularly Mrs. Daka, Hon. Malunga) on cheques in exhibit p8A were not been charged with the offence of stealing the money.

Dw5 told the court that other documents which he used to retire the imprest which he has not managed to produce in court are in the custody of the Provincial Accountant.

SUBMISSIONS BY THE PROSECUTION

The prosecution filed written submissions in which they have argued that they have established that during the period in issue, the Accused persons were public officers employed by the Judiciary in the positions stated in the charge sheet. They further submitted that A1 was responsible for receiving and depositing fines and court fees; that A2 was custodian of cheques for the Judiciary Clients Account and Expenditure Account in the Eastern Province; that A3 was a sub-warranty holder and a signatory to the bank accounts for the Judiciary in the Eastern

Province; that A4's duties included preparation of payment vouchers and that A5 was a signatory.

The prosecution also submitted that they have established that the accused persons took money since they received payments from the various bank accounts in issue. They further submitted that the money which the accused received is property of the Government of the Republic of Zambia and is capable of being stolen within the meaning of section 265 of the Penal Code. They added that they are not obliged to prove that the accused intended to deprive the government of the money permanently since the accused only attempted to refund the money after two years following a demand.

As regards the Clients Account, the Prosecution submitted that contrary to the accused's testimony that the Judiciary Headquarters used to remit funding for the Judiciary in the Eastern Province through the Clients Account, the deposits into the account only came about following Pw2's request to replenish the account since it had run out of money to pay litigants. Here, I must hasten to state that this submission is not supported either by pw2's testimony or the statement of account. It is evidence being submitted from the bar which as a matter of settled principles of the law of evidence, is inadmissible. I shall therefore disregard this submission.

The prosecution further submitted that ordinarily, the Clients Account could not have run out of money to pay litigants as testified by Pw2 except for the reason that the money was stolen by the accused. They submitted that this is so because A2 told the court that funding remitted through the Client Account by the Judiciary Headquarters was distinguishable from litigants' money so

that when an officer is withdrawing the money remitted from headquarters, it would be impossible for them to stray into the litigants' money. In that view, the prosecution submitted that if the funding from the Judiciary headquarters was kept separate from the litigants' funds, the Clients Account would not have run out of money to pay litigants as testified by pw2.

The prosecution further submitted that the accused, in their quest to assert that the money in issue was paid to them as imprest, should have subpoenaed officers of the Judiciary whom they allege to have custody of the documents supporting the payment and retirement of the imprest. This, the prosecution contend, is due to the fact that the accused only produced few of such documents whilst claiming that the other documents supporting other payments are in the custody of the Judiciary. Further, according to the prosecution, the other factor necessitating the subpoena of witnesses by the accused is the arresting officer (Pw13's) denial that the mentioned documents exist since he has told the court that they were not availed to him by their supposed custodian (A2) when he requested for them during his investigations into the matter. This requirement, the prosecution submitted, is in accordance with the holding in the case of *MWEWA MURONO VERSUS THE PEOPLE* (2004) Z.R. 207(SC) which on the one hand places the legal burden of proof on the prosecution but on the other, places the evidential burden on the accused in instances such as this one where they have asserted that documents supporting the imprest paid to them are in the custody of the Judiciary. Relevant to this submission, it was held in this case that **"the accused bears the burden of adducing evidence in support of any defence after he has been found with a case to answer"**.

They added that according to accounting procedures, a copy of a payment voucher must be put on the employment file of the officer who has been paid imprest. However, a perusal of the

Accused's employment files which were tendered in evidence by Pw4, disclose that there are no copies of payment vouchers on whose basis the accused were paid imprest.

It is the prosecution's further submission that the accused should be found culpable even though they later retired the imprest to the Chief Administrator after his directive. This they submitted is because the accused got the money without authority and only refunded the money when directed by the Chief Administrator.

The prosecution further submitted that the fact that the Chief Administrator directed the accused to retire the imprest does not entail that he authorized them to be paid imprest from the Clients Account. Rather, the revelations only disclose that the Chief Administrator had learnt from the audit report that the accused had paid themselves imprest and his consequent directive for the retirement of the imprest was in a bid to recover the money from the Accused persons.

As regards the fines which are not appearing in the statement of account for the Fines Account e.g. the K12, 000, 000.00, the prosecution submitted that A1 should not be heard to heap the blame on Chongo Mpundu because the duty to account for the fines was delegated to A1 by the Assistant Registrar. As such, A1 was not empowered to delegate this duty and this requirement arises from the principle laid down by the latin maxim "**delegatus non potest deledare**" which means "**a person to whom powers have been delegated cannot delegate them to another**", according to the OSBORNE'S CONCISE LAW DICTIONARY,

SUBMISSIONS ON BEHALF OF THE ACCUSED PERSONS

Mr. Chikuta, Counsel for the Accused conceded that all the accused person were public officers in the employment of the Judiciary. As regards the Clients Account, Mr. Chikuta submitted that A1 and A2 did not steal the money from this Account because it was duly paid to them as imprest adding that the imprest was subsequently retired after it was expended on judicial activities. This, Counsel submitted, is because the accused were legally entitled to draw imprest from the Clients Account since apart from hosting litigants' money, the account also used to host money intended for operations of the judiciary. Counsel cited exhibits pd1, pd2 and pd6 authored by Mr. Mwamfuli (then Chief Administrator of the Judiciary) to be the authority that empowered A1 and A2 to draw imprest from the Clients Account adding that A2's response to exhibits pd1 and pd2 is evidence that the imprest was retired. The mentioned response is marked exhibit pd5.

Turning to allegations arising from the Judiciary Expenditure Account, Mr. Chikuta submitted that similarly, the money that was paid to the accused persons from this account was imprest that was duly authorised, expended on operations of the Judiciary and eventually retired.

Counsel urged this court to dismiss the prosecution's submission requiring the accused persons to prove their assertion that other documents supporting the authorization and retirement of other imprests paid to them are in the custody of the Judiciary because doing so would amount to shifting the burden of proof on the accused.

Counsel further submitted that the prosecution has failed to lead evidence to show which payment vouchers and other documents were handed over to one George Kanguya and pw13 by

A2 and Champion Phiri. He added that the prosecution has dereliction its duty by failing to call witnesses such as Mr. Mwamfuli to speak on the status of exhibits pd1, 2 and pd6 which he wrote as regards the retirement of the imprest which the accused were paid but is subject of the instant allegations. Counsel submitted that the prosecution has further derelicted its duty by failing to call witnesses from the judiciary in order for them to testify whether or not the documents supporting the imprest the accused are alleged to have stolen are in the custody of the judiciary. Counsel added that this manner of dereliction should be ruled in favour of the accused persons.

He further submitted that on the contrary, through cross-examination of witnesses for the prosecution and in their testimonies, the accused persons have demonstrated that there is a plausible explanation regarding the payments against which they stand charged thereby discrediting the evidence for the prosecution

FINDINGS OF FACT, ANALYSIS AND APPLICATION OF THE LAW.

I have carefully considered the entire evidence and the written submissions. Suffice it for me to state that I am highly indebted for the mentioned submissions. Henceforth, I shall state my findings and apply the law thereto.

I have found as a matter of fact, the following:

1. That A1-A5 were, during the period in issue, public servants in the employment of the Judiciary within the meaning of section 277 of the Penal Code. Apart from the testimonies of pw2, pw4, pw13, this aspect has been admitted by the accused persons.

2. That A1 and A2 were paid various amounts of money from the Clients Account. Apart from the statement of account for the Clients Account (exhibit p18), this aspect has been admitted by A1 and A2.
3. That A1-A5 were paid various amounts of money from the Judiciary Expenditure Account. A1 – A5 have admitted this position. And;
4. That the money paid to the accused persons either from the Clients Account or the Judiciary Expenditure Account, came into the accused persons' possession by virtue of their employment in the Judiciary.

What is in dispute are the following:

1. Whether or not A1 and A2 were entitled to draw imprest from the Clients Account. If the answer is in the affirmative, the other question would be whether or not the imprest they got was dully authorised, utilized on judicial activities and eventually retired.
2. Whether or not A1 embezzled any of the fines that were supposed to be deposited in the Fines Account.
3. Whether or not the imprest which A1 – A5 drew from the Judiciary Expenditure Account was dully authorised, expended on the operations of the judiciary and eventually retired.

I shall determine the above questions in the order that they have been listed. Regarding the Clients Account, the paramount question as already noted, is whether or not A1 and A2 were entitled to draw imprest from this account. There are two opposing positions here. On the one hand, the prosecution have told the court that A1 and A2 were not entitled to draw imprest from the Client Account because the money that is kept in this account is only intended for litigants. This position was advanced by pw1, pw2, pw7 and pw13. On the contrary, A1 and A2 have

maintained that they were lawfully entitled to draw imprest from the Clients Account because apart from hosting litigants' money, the Clients Account also used to receive funds intended for operations of the judiciary from the Judiciary Headquarters adding that it is the money intended for operations of the Judiciary which officers of the Judiciary (including A1 and A2) were entitled to draw as imprest and retire after expending it on the operations.

I shall revert to this dispute later. For now, it is pertinent to examine the purpose of the money that is kept in the Clients Account. Section 6 of the JUDICATURE ADMINISTRATION ACT, CHAPTER 24 OF THE LAWS OF ZAMBIA is instructive here. Quoting only the relevant portions, the provision provides as follows

6. (1) The funds of the Judicature shall consist of such moneys as may-
 - (a) be appropriated by Parliament for the purposes of the Judicature;
 - (b) be paid to the Judicature by way of court fees or by way of such grants as the Chief Administrator may accept; or
 - (c) vest in or accrue to the Judicature...
- (3) There shall be paid out of the funds of the Judicature-
 - (a) the salaries and allowances of members of the Judicature...
 - (b) the loans of members of the Judicature;
 - (c) the salaries, allowances and loans of the staff of the Judicature;
 - (d) such travelling, transport and subsistence allowances for staff of the Judicature as may be determined by the Commission with the approval of the President; and
 - (e) any other expenses incurred by the Judicature in the exercise and performance of its powers and functions, other than capital expenditure chargeable to the Government under section twelve.

Based on the above cited legal provision, I have no doubt that the money that is kept in the Clients Account is not part of the funds for the Judiciary and should therefore not be expended on the operations of the Judiciary. Rather, the money is held in trust on behalf of litigants indeed as stated by pw1, pw2, pw7 and pw13.

Reverting to the dispute that I have already alluded to, A1 and A2 have anchored their authority to draw imprest from the Clients Account on exhibit pd1, the letter written to A2 by the Chief Administrator (Mr. Mwamfuli) in which he is directing A2 to retire the imprest which he drew from the Clients Account. A1 and A2 have told the court that exhibit pd1 signifies authority for officers of the Judiciary (and therefore A1 and A2) to draw imprest from the Client's Account because instead of charging A2 for stealing the money, Mr. Mwamfuli directed him to retire the imprest. According to A1 and A2, Mr. Mwamfuli could have charged A2 with the offence of theft of the money if it was illegal for A2 to draw imprest from the Clients Account. This testimony has been augmented by Mr. Chikuta in his written submissions. On the contrary, the prosecution have submitted that exhibit pd1 does not constitute authority for officers of the Judiciary (including A1 and A2) to draw imprest from the Clients Account.

The record of proceedings discloses that Mr. Mwamfuli, the author of exhibit pd1 has not testified in this matter as regards the status of exhibit pd1 or at all. However, I have carefully examined the tenor of exhibit pd1 and also the connected pieces of evidence in assessing whether or not it constitutes authority for A1 and A2 to draw imprest from the Clients Account. Firstly, it is important for me to state that exhibit pd1 is unconnected to the internal audit report (exhibit pd3) and exhibit pd2 - another letter written by Mr. Mwamfuli in which he is directing A1, A2,

A3 and A4 to retire the imprest disclosed in the mentioned audit report. I am of this view because the cheques that were drawn by A1 and A2 from the Clients Account are not among those that have been mentioned in the audit report. The cheques drawn by A1 from the Clients Account are as follows: 000011, 000025, 000008, 000007, 000014, 000010, 000026, 000009 and 000004. Those which were drawn by A2 from the same account are cheque nos. 000033 and 000024. Clearly these are not part of the cheques highlighted in the internal audit report whose retirement was being demanded by Mr. Mwamfuli in his letter (exhibit pd2) addressed to A2. I have deemed it prudent to draw the distinction between exhibits pd1 from exhibit pd2 and pd3 because A1 and A2 and Mr. Chikuta seem to connect exhibit pd1 to exhibits pd2 and pd3 and in that belief, they have assumed that the money that was drawn from the Clients Account is part of the imprest that was retired in line with directives stipulated in exhibits pd2 and pd3. I urge that exhibit pd1 is unconnected to the internal audit report (exhibit pd3) and exhibit pd2 and should thereby be analysed separately from exhibits pd2 and pd3.

Reverting to exhibit pd1, the absence of the testimony of Mr. Mwamfuli has not impeded me in ascertaining whether or not it amounted to authority for officers of the Judiciary (in this case, A1 and A2) to draw imprest from the Clients Account. I say so because I have been adequately guided by its tenor which in my view does not constitute authority for A1 and A2 to draw imprest from the Clients Account. I have arrived at this finding because exhibit pd1 clearly states that Mr. Mwamfuli has been made aware that A1 had withdrawn an amount of K39.5 million as imprest from the clients account. At the risk of repeating myself, the relevant portion of exhibit pd1 highlights this position as follows

it has been brought to my attention that an amount of K39.5 million kwacha was withdrawn in your name as accountable imprest from the High Court Clients Account.

This is to direct you to retire the money...

Bearing the tenor of exhibit pd1 in mind, it is startling that the officer who is said to have granted A1 and A2 authority to draw imprest from the Clients Account could indicate that he is hearing about this development. Exhibit pd1 has further drawn my attention to A2's response to pw2 when she queried him about the withdrawals of money from the Clients Account by some of the accused persons. The record discloses that when confronted, A2 told pw2 that officers of the Judiciary drew imprest from the Clients Account based on the Chief Administrator's written authority. However, A2 did not avail her such written authority. It is not clear whether exhibit pd1 is the authority which A2 meant. If this be the position, A2 would again be contradicted by exhibit pd1 because as stated already, this letter does not carry the tenor of authority for A2 to draw imprest from the Clients Account.

I must hasten to add that the fact that there were deposits of money into the Clients Account whose source and purpose pw13 did not investigate, does not alter my position because the cardinal rule governing imprest, according to pw1, pw2, and pw7, is that there must be authorization from either the warranty holder or sub-warranty holder before an officer draws it. If the money is drawn without authorization, it becomes theft because there would be no justification to withdraw the money. Turning to the instant case, I have found that A1 and A2 were not authorised to withdraw the money from the Clients Account. This is in view of the fact that exhibit pd1 which A1 and A2 sought to rely upon as authority for them to withdraw the money, has been found not to constitute authority based on the reasons that I have already

outlined. Under the circumstances, I have no hesitation in finding that A1 and A2 stole the money which they withdrew from the Clients Account. Allegations arising from the Clients Account are contained in the first Count.

Turning to the Fines Account, pw1, pw2, pw7 and Pw13 told the court that fines that are paid into court must be deposited in the Fines Account for onwards transmission to the national treasury under control 99 held at the Bank of Zambia. The mentioned witnesses told the Court that fines are not part of funds for the Judiciary. As stated already, the pertinent question here is whether or not A1 embezzled any portion of the receipted fines. The requisite receipt book is exhibit p4.

The prosecution have brought A1 under spotlight firstly because he was in charge of the Fines Receipt Book during the period in issue. And, secondly because according to Pw13 the quantum of the receipted fines does not correspond to the amount of the fines that were deposited in the Fines Account. To augment his testimony, pw13 gave the example of the amount of K12, 000, 000.00 which he said was receipted on exhibit p5 (which is part of exhibit p4) on 18th May 2009 but does not appear in the statement of account for the Fines Account (exhibit p19).

As noted already Pw2 told the Court that A1 took over the Fines Receipt Book on 18th August 2008. This aspect is confirmed by a handover certificate signed by A1 appearing at the back of the triplicate of receipt no. 1119810 in exhibit p1. Furthermore, particularly as regards the fine of K12, 000, 000.00, there is no dispute that it was paid to A1 by pw3. Pw3 confirmed this position to the court. I have carefully examined the statement of account for the Fines Account (exhibit

p19) whereupon I have discovered that indeed the K12, 000, 000.00 does not appear either on 18th May 2009 when it was receipted or on any date thereafter. This is still the position even after adding up the cumulative totals of the deposits that were made after 18th May 2009. Thus deposits for 18th May 2009 are as follows: K75, 000.00, K200, 000.00, K200, 000.00. Deposits for 19th May 2009 are as follows: K252, 000.00, K50, 000.00, K255, 000.00. Deposits for 20th May 2009 were as follows: K4, 000, 000.00, K800, 000.00, K800, 000.00 and K37, 000.00. Suffice it to add that on 18th May 2009, an amount of K4, 000, 000.00 was receipted in the Fines Receipt Book and requisite receipt is exhibit p24. Deposits for 21st May 2009 were as follows: K1, 200, 000.00 and K73, 200.00. Deposits for 22nd May 2009 were as follows: K10, 000.00 and K10, 000. The list of deposits for the month of May 2009 goes on in small amounts the biggest being K2, 250, 000.00 and as can be noted, the K12, 000, 000.00 does not appear anywhere in the statement of account even when deposits of various amounts of money were being many days after the K12, 000, 000.00 was collected.

In view of the above, I have found that the K12, 000, 000.00 was indeed embezzled because it does not appearing anywhere in the statement of Account for the Fines Account. Turning to A1, on the other hand, he has told the court that he saw deposit slips indicating that Chongo Mpundu (an employee of the Judiciary at the material time) who was assigned to deposit the K12, 000, 000.00 had indeed deposited the K12, 000, 000 in the Fines Account. Here, I must state that I do not agree with A1 because the K12, 000, 000.00 could have appeared in the statement of account if indeed it was deposited. The fact that it does not appear in the statement of account is proof that it was not deposited. On the other hand, A1 has shifted the blame on the same Chongo Mpundu stating that being the officer who was assigned to deposit the money he is therefore the

right person to account for the K12, 000, 000.00. Here again, I do not agree with A1 because he was the officer responsible for managing the receipted fines and it is for this reason that he signed the handover certificate in exhibit p1. He should therefore not be heard to shift the blame on Chongo Mpundu. Furthermore, the fact that the prosecution have neither produced requisite deposit slips showing the officer who deposited the money nor called Chongo Mpundu to testify, is immaterial in my view. I am of this view firstly because it is certain that the K12, 000, 000.00 is missing from the statement of account. Secondly and given the fact that the K12, 000, 000.00 is missing from the statement of account, a reasonable Clerk of Court placed in A1's position would have instituted appropriate disciplinary measures against Chongo Mpundu. This expectation arises from the fact that A1 was the person responsible for managing the fines once receipted. To do nothing about the loss and only to heap the blame on Chongo Mpundu during trial for the loss of the money is in my view an afterthought especially after A1 noticed that the said Chongo Mpundu is not before court. I hold this position because the Clerks of Court Handbook clearly apportions accounting duties on Clerks of Court. The hand book at pages 61 and 62 stipulates that

Clerks of Court by virtue of their office handle monies arising from various transactions. These monies may be divided into four accounts, viz: Resident Magistrate General Account; General Revenue Account; Court Fees Account; and Resident Magistrate Composition Order Account...any shortage in cash which when banking takes place will have to be made up by the Clerk of Court...

Based on the reasons that I have outlined above, I am satisfied that A1 embezzled the K12, 000, 000.00.

Further to the Fines Account, the prosecution have alleged that A1 stole a total amount of K25, 200, 000.00 from the Fines Account between 1st January 2008 and 30th May 2009. It is not clear why they decided to pick on 1st January 2008 in view of the fact that the handover certificate in exhibit p4 denote the date of 18th August 2008 being the date when A1 took over the Fines Receipt Book. The correct commencement date of the allegation as regards the Fines Account in accordance with the mentioned handover certificate should be 18th August 2008. Be that as it may, I must state that I was not able to compute the total amount of fines that were receipted in exhibit p4 during the stated period so as to compare it with the total fines which were deposited in the Fines Account during the same period of time. This is because some receipts in exhibit p4 especially those that were issued in 2008 have faded away. Under the circumstances, I will restrict my finding to the K12, 000, 000.00 which I have already established beyond reasonable doubt to have been embezzled. Suffice it to add that in the case of theft by servant, a finding of misappropriation of part of the money or goods would still support a conviction on the allegation of theft. This is in accordance with the case of CHITUNDU v THE PEOPLE (1969) Z.R. 67 (H.C.) in which it was held that

In a prosecution for theft by servant, proof of a general deficiency does not, by itself, support a conviction; **the State must introduce some evidence of theft of at least part of the goods or money** (the emphasis is mine).

In view of the above, I find A1 culpable under the fifth count but only to the extent of an amount of K12, 000, 000.00

Turning to the Judiciary Expenditure Account, the nagging question, as stated already, is whether or not A1-A5's imprest which they drew from this account was authorised, the money expended on the operations of the Judiciary and eventually retired. All the accused have told the court that their respective imprests were duly authorised, the money expended on operations of the

Judiciary and eventually retired. Apart from the documents they produced in evidence, A1 –A5 told the Court that other documents supporting the payment and retirement of their respective imprest for which they stand charged, are in the custody of the Judiciary. For the documents which are alleged to be in the custody of the Judiciary, Mr. Chikuta has submitted that it is dereliction of duty on the party of pw13 not to call the current and requisite office bearers to testify as regards whether or not the mentioned documents are in existence adding that the mentioned dereliction of duty must be ruled in favour of the accused persons. On the contrary, pw13 has told the court that no such documents exist because the accused did not avail them to him at the time they were office bearers when he was investigating these allegations.

I propose to start with the documents that were tendered in evidence before stating my position on the documents which are not before this court. Firstly as regards A1-A3 and A5, they told the court that proof that they retired their respective imprests is on exhibits pd6, a letter from Mr. Mwamfuli, indicating that out of the cheques which were highlighted in the internal audit report (exhibit pd3) as not having been retired, only Marriam Nachalwe, Mary Daka, Katyetye Willard and Sydney Kasunga had not yet retired their imprests. According to A1-A3 and A5, the initial demand by Mr. Mwamfuli for the retirement of the imprest was instituted by his letter addressed to A2 (exhibit pd2). I must state that the internal audit report listed among other employees of the Judiciary in the Eastern Province, A1-A3 and A5 under exhibit pd4, as not having retired their respective imprests. After carefully comparing the unretired cheques listed in the internal audit report (exhibit pd3) and the cheques whose money the mentioned accused are alleged to have stolen, I have observed as follows:

1. A1 drew 14 cheques out of which only one cheque (cheque no. 001066 in exhibit p8E) has been cited in exhibit pd4. According to exhibit pd6, the imprest on this cheque has been retired. 13 cheques bearing a total amount of K105, 948, 000.00 have not been cited in exhibit pd4 and their supporting documents are those alleged by A1 to be in the custody of the Judiciary.
2. A2 drew 49 cheques out of which only seven cheques (cheque no. 001184, 001240, 001043, 000928, 001079, 001019 and 001213 to in exhibit p8D bearing a total amount of K107, 870, 000.00) has been cited in exhibit pd4. According exhibit pd6, the imprest on these cheques has been retired. 42 cheques bearing a total amount of K184, 755, 638, 000.00 have not been cited in exhibit pd4 and their supporting documents are those alleged by A2 to be in the custody of the Judiciary.
3. A3 drew 39 cheques out of which only seven cheques (cheque no. 000950, 001012, 001189, 001220, 001232, 00001283 and 001149 in exhibit p8B bearing a total amount of K82, 982, 000.00) has been cited in exhibit pd4. According to exhibit pd6, the imprest on these cheques has been retired. 32 cheques bearing a total amount of K167, 499, 738, 000.00 have not been cited in exhibit pd4 and their supporting documents are those alleged by A3 to be in the custody of the Judiciary. And,
4. A5 drew 36 cheques out of which only three cheques (cheque no. 000935, 001084, and 001089 in exhibit p8A bearing a total amount of K82, 982, 000.00) have been cited in exhibit pd4. According exhibit pd6, the imprest on these cheques has been retired. 33 cheques bearing a total amount of K167, 499, 738, 000.00 have not been cited in exhibit pd4 and their supporting documents are those alleged by A5 to be in the custody of the Judiciary.

As regards A5, he additionally adduced the following: exhibit pd12 as proof of documents supporting the payment and retirement of cheque no. 001089 which is part of those that were cited in the internal audit report. Exhibit pd24 is proof of documents supporting the payment and retirement of cheque no. 000935; exhibit pd25 as proof of documents supporting the payment and retirement of cheque no. 001603; exhibit pd26 as proof of documents supporting the payment and retirement of cheque no. 001438; and, exhibit pd27 as proof of documents supporting the payment and retirement of cheque no. 000991.

A4 was not cited in the internal audit report. However, he produced exhibit pd8 as evidence of the documents supporting the payment and retirement of cheque no. 001601. He also produced exhibit pd9 as evidence of the documents supporting the payment and retirement of cheque no. 0011455.

A2 produced exhibits pd15, 22 and 23 as evidence of the documents supporting the payment and retirement of cheque nos. 000928 and 1079, 001161, respectively.

Suffice it to state that the money on all these cheques are part of that which A1-A5 are alleged to have stolen in the instant case. The question as regards the above mentioned documents is: do they support the payment and retirement of the respective imprest? I answer the question in the affirmative because I have no basis to doubt their authenticity. I say so because for cheques which were demanded by Mr. Mwamfuli to be retired in exhibit pd2, they were not demanded again as evidenced by exhibit pd6, another letter from Mr.

Mwamfuli. Secondly, some documents particularly exhibit pd9 in respect of A4 ultimately appear in the Judiciary Expenditure Account as having retired the money that was drawn as imprest and for which A4 stand charged.

I therefore have no doubt that these documents are sufficient proof that A1 –A5 duly retired the imprest referred to.

Turning to the imprest whose supporting documents the accused persons have said are in the custody of the Judiciary, I am not satisfied that the prosecution has discharged its burden in ruling out this possibility. I am of this view because the accused have alleged that some of their imprests were processed using policy files. The mentioned policy files have not been tendered in evidence by the prosecution despite the assertions about their whereabouts having been raised by the accused persons when the prosecution had not yet closed its case. Instead, the state has only availed the Court with the accused's personal files. Furthermore, the payment vouchers which were collected by pw13 from Champion Phiri on exhibit pd10 have also not been tendered in evidence by the prosecution. Under the circumstances, the court has been denied an opportunity to inspect the mentioned policy files and payment vouchers with a view to ascertain whether or not they contain documents supporting the accused's imprest. Given this development, I am entitled to assume that had the policy files and the payment vouchers mentioned in exhibit pd10 been adduced in evidence, they could have disclosed evidence favourable to the accused. This position is in accordance with the case of KALEBU VS. THE PEOPLE (1977) Z.R. 169, in which it was held that **"where evidence available to**

only to the police is not placed before the court it must be assumed that had it been produced it would have been favourable to the accused”.

I must hasten to add that the onus placed on an accused is discharged if the accused has managed to cast doubt in the mind of the court about his or her culpability. This is the guidance rendered in the case of KASEKE VS. THE PEOPLE (1974) ZR51 in which the Supreme Court stated that **“the onus is discharged if the explanation is one which, though it might not necessarily be true, might reasonably be true”.**

Turning to this case, I am of the view that the accused persons have discharged this onus as regards allegations arising from the Judiciary Expenditure Account. I have found in this manner firstly because they have availed the court with documents (exhibits pd2, pd3, pd4, pd5, pd6, pd8, pd9, pd12, pd14, pd19, pd22 - pd27) supporting payment and retirement of some of the imprest. And secondly, because they asserted that other documents supporting other imprests are on policy files and payment vouchers (exhibit pd10) which are in the possession of the state. Suffice it to state that it is common knowledge that the mentioned policy files are indeed in the possession of the Judiciary. The case of KALONGA VS. THE PEOPLE (1976) ZR 124 (HC) further fortifies me as regards my finding that the accused have discharged the onus placed on allegations arising from the Judiciary Expenditure Account. In this case, the High Court the high court prescribed as follows

the test is, that an explanation which might reasonably be true entitles an accused person to an acquittal even if the Court does not believe it, an accused is not required to satisfy the court as to his innocence but simply to raise a reasonable doubt as to his guilty.

I don't accept the prosecution's proposition that the accused persons should have subpoenaed requisite office-bearers in the Judiciary in order to prove the existence of the policy files and payment vouchers because doing so would be shifting the burden of proof on the accused, a position which is not tenable at law. The holding in the case of ISA YONA SIBALE VS. THE PEOPLE SCZ JUDGMENT NO. 4 OF 2009 prohibits such practice in the following terms

third is that the trial Magistrate actually shifted the burden of proof on the accused; notwithstanding that at the beginning of the judgment, she said that the appellant had failed to adduce independent evidence that the bag was not his, but for the passenger who has no seat; and on the Bemba language, amounted to shifting the burden of proof from the prosecution to the appellant. That was a misdirection on law.

VERDICT

Having considered all of the evidence and based on the reasons already outlined, I acquit A1-A5 of their respective charges under the 2nd - 4th and 6th-11th Counts and further direct that they be set at liberty forthwith as regards these counts. However, I find A1 and A2 **guilty** under the 1st count and also find A1 **guilty** under the 5th count and **convict** them accordingly of the offence of theft by public servant contrary to section 272 of the Penal Code as read together with section 277 of the same statute.

DELIVERED IN OPEN COURT THIS ... DATE OF...2017


KENNETH MULIFE

