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The Serwamba case: achieving Uganda's first successful money laundering convictions

How Ugandan prosecutors obtained the first ever convictions under the 2013 Anti-Money Laundering Act, overcoming numerous challenges in relation to the financial investigation, prosecution, international cooperation and asset management.

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Key points

- In 2013, Uganda passed the Anti-Money Laundering Act (AML Act).¹ Prior to this, the offence of money laundering was not criminalised under Ugandan law. Uganda's Financial Intelligence Authority (FIA) was only established in July 2014. There was very little knowledge about money laundering among police detectives, prosecutors and even judicial officers.
- At the Office of the Director of Public Prosecutions, prosecutors quickly realised that the new AML Act could give them impetus in fighting organised crimes like corruption, terrorism, drug trafficking and human trafficking. However, for the first year no prosecutor dared to try it.
- In May 2015 a team of prosecutors including the author of this case study – who was at the time a Senior State Attorney at Uganda's Office of the Director of Public Prosecutions – decided to test the provisions of the Act in the case of Uganda Versus Serwamba David Musoke and 6 Others.²
- This landmark case blazes a trail not just for Uganda but for other countries to prosecute cases of money laundering and recover illicit assets. The analysis sets out the investigation strategy and shows how the prosecutors overcame challenges in relation to conducting the parallel financial investigation, dealing with a vast amount of information and long timescales, securing the cooperation of accomplices as witness, obtaining information from abroad through informal cooperation channels, and managing the confiscated assets (cash, vehicles, land).

¹ The Ugandan AML Act is available at: <https://www.fia.go.ug/acts-regulations>

² The full court judgement is available at: <https://ulii.org/ug/judgment/hc-criminal-division/2017/100>

The case

1. The complainant (Equity Bank Uganda Ltd) is a commercial bank in Uganda with subsidiaries throughout the East African region. The prime suspect, Serwamba David Musoke, was the operations manager of Equity Bank Oasis Mall Branch in Kampala.
2. On 28 and 29 March 2015, Serwamba colluded with various other conspirators to embezzle USD 1,450,000 from the accounts of two Southern Sudanese nationals. The money was withdrawn in three instalments using fake withdrawal slips by fraudsters who impersonated the real account holders and presented fake passports. Serwamba, the architect of the fraud, did not conduct biometric verification on the imposters before approving the withdrawal of the money, which the conspirators divided amongst themselves.
3. On 29 March 2015, some of the conspirators posted a video on WhatsApp with them posing with bundles of US dollars in their apartment. This video would later go viral and lead to the arrest of some of the conspirators. The fraud came to the Bank's attention on 1 April 2015 when one of the real account holders in South Sudan went to transact at the Juba branch, and uncovered strange transactions on his bank account. The matter was immediately reported to the police in Kampala.
4. A financial investigation was conducted to follow the money and recover the illicit assets. The financial investigation revealed the purchase of various assets:
 - On 31 March 2015, one of the conspirators bought a Mercedes Benz 4matic 500 for USD 25,000 in cash, leaving it registered in the names of the seller.
 - On 31 March 2015, the same conspirator purchased a plot of land in Buziga (a suburb of Kampala) for about UGX 100,000,000 (about USD 30,000) in cash. The sale agreement indicated the names of his mother as the purchaser.
 - In mid-April 2015, the main conspirator, Serwamba, purchased a plot of land in Wakiso for UGX 110,000,000 (about USD 32,000) in cash. The sale agreement indicated the name of his girlfriend's mother as the purchaser.
 - In April 2015, Serwamba purchased a Mercedes Benz 4matic valued at UGX 80,000,000 (about USD 23,000), leaving it registered in the names of the seller.
 - In the same month, Serwamba used UGX 8,000,000 (about USD 2,300) to clear taxes on a Toyota Corona. His girlfriend had imported the car for about UGX 16,000,000 (about USD 4,600) before the crime was committed.
 - In April 2015, Serwamba kept cash UGX 255,000,000 (about USD 73,000) in a closet at his brother's home. The money was recovered during a police search.
 - Investigations revealed that two of the conspirators went on holiday to Dubai in mid-April 2015, where they spent luxuriously.
5. In May 2017, seven of the conspirators were convicted for the offences of embezzlement, causing financial loss, forgery, conspiracy to defraud and money laundering. They were sentenced to varying prison terms between five to 12 years. The recovered properties were confiscated and forfeited to the complaint bank. However, most of the stolen money was not recovered.
6. The accused were also ordered to compensate the complainant bank severally and jointly in an amount of USD 1,250,000,000.

What can we learn from this case?

A prosecution-led strategy ensured meticulous investigation and correct procedures

As soon as the case was reported, the police quickly realised that it was essential to seek the advice of prosecutors from the onset. The Serwamba case, therefore, became a prosecution-led investigation case.

Throughout the investigation, regular case management meetings were held between the police investigation team and prosecutors. At the meetings, evidence gathered would be reviewed, new investigation leads identified, and further investigation actions agreed upon. On occasion, police detectives would consult prosecutors by mobile phone calls for urgent advice.

The decision to adopt a prosecution-led investigation strategy ensured that the case was meticulously investigated; gathering all the relevant evidence while quickly discarding irrelevant information. It also ensured that police detectives did not ignore crucial legal procedures like securing search warrants and restraining orders against recovered properties.

A parallel investigation strategy enabled more targeted investigations into predicate offences and stolen assets

Another critical decision was to adopt a parallel investigation strategy. The investigation team was divided into two teams:

- One team was tasked to focus on investigating the predicate offences like embezzlement, causing financial loss and forgery.
- The second team was tasked to simultaneously conduct a financial investigation with a view to following the money to identify the proceeds of crime for seizure and restraint.

This strategy was crucial to the recovery of a decent amount of illicit assets, and ultimately securing the money laundering conviction.

Having a large prosecution team helped to overcome challenges of long timescales and vast documentation

Because of their intricate nature, money laundering cases are bound to involve a vast quantity of documents and require a long time to prosecute. The Serwamba case took us at least two years to prosecute. It involved seven accused persons and about 10 defence lawyers.

Because the court had many other cases to try, it was inevitable that there were several adjournments. Even small details like determining hearing dates were problematic. During the hearing, the prosecution had to deal with an array of objections from the defence team.

In order to ensure that the prosecution did not become overwhelmed, we realised we needed to have a sizeable prosecution team. Accordingly, three prosecutors were assigned to handle this case. This also helped ensure continuity in case one of the prosecutors became unavailable.

The evidence of accomplices acting as prosecution witnesses was crucial

Criminals will go to great lengths to prevent law enforcement authorities from recovering their illicit wealth. Inevitably, money laundering schemes involve a large number of conspirators. It is essential, therefore, for the prosecution to win over some of the conspirators to its side to achieve success.

In the Serwamba case, the prosecution made an informal agreement not to prosecute two of the participants on condition that they would testify as prosecution witnesses. The two accomplices had appeared in the WhatsApp video while posing with bundles of US dollar bills. They had also helped one of the prime suspects in identifying assets like vehicles and land for purchase.

Shortly before the trial, the prosecution also agreed to drop the charges against three other suspects on condition that they would testify against their co-conspirators. The use of accomplices was fundamental to the successful outcome of the case.

The use of accomplice evidence inevitably meets stiff resistance from defence lawyers. In the Serwamba case, the defence team ferociously attacked the credibility of the accomplice witnesses and contended that they were giving false testimony to avoid being prosecuted. However, it is up to the presiding judge to determine the reliability and relevance of the evidence of an accomplice.

Informal cooperation was valuable where formal mutual legal assistance (MLA) was not possible

The Serwamba case had a transnational dimension, considering that the money was withdrawn from accounts belonging to Southern Sudanese citizens, and domiciled in the Equity Bank Juba branch. It was necessary to interview the two account holders and some of the key staff at the Juba branch.

Through police-to-police cooperation, the assistance of the Southern Sudan Police was sought to record statements of the account holders. Although the two account holders confirmed that money had been fraudulently withdrawn from their accounts, they declined to record statements. Nevertheless, the Southern Sudan Police recorded statements from two bank employees at the Juba branch.

During the trial, the testimony of these bank staffers could not be secured through formal MLA as neither Southern Sudan nor Uganda had any regulations or the technological capacity to allow video link testimonies at the time. (Uganda has since passed regulations to allow video link witness testimonies, and acquired the necessary technology in some of its courts.)

Fortunately, Equity Bank, using its resources, met the cost of flying the two bank employees to Kampala to testify during the trial. There is no doubt that in future cases, both informal and formal MLA will be critical.

Overcoming the challenges of asset management

In most developing countries, asset management of proceeds of crime will be a significant challenge to the criminal justice system. In the Serwamba case, three major types of assets were recovered, namely cash, vehicles and land. Here is what we did and what we learned.

Cash

UGX 255,000,000 (about USD 73,000) was recovered in a closet in the house of a brother of the main suspect, Serwamba. As soon as this recovery was made, the lead investigating officer contacted the prosecution on how to keep this exhibit. The fear was that it was too tempting to keep such a large amount of cash within the police station as poorly paid police officers could easily steal it.

It was decided that the money would be kept in a specially provided vault at the Bank of Uganda. In this case, the money was not only a recovered asset but also an exhibit. The money was photographed and kept in the same bag in which it had been recovered. The chain of custody was proved by producing all the correspondence concerning the storage of the money in the Central Bank.

Based on this experience, we believe that if countries do not yet have guidelines concerning the safe custody of large amounts of cash recovered in money laundering cases, they should consider drafting them.

Vehicles

Four motor vehicles were recovered in the Serwamba case. The storage of these vehicles was a challenge, as the police do not have a warehouse for that purpose. Consequently, the cars were driven to the Anti-Corruption Court parking yard where they spent about one and a half years.

The prosecution at some point contemplated selling the vehicles and keeping the proceeds on an escrow account pending the finding of the court. However, the cars were at the same time exhibits which needed to be produced before the court. There was also the risk of being sued by the accused persons if they were acquitted. Ultimately, the vehicles were forfeited to the complainant Bank, but their value had depreciated substantially.

This demonstrates that countries should consider establishing asset management facilities like warehouses where recovered properties such as vehicles can be safely stored. It is also advisable to adopt asset management guidelines, which may, among others,

provide for the sale of such items before the conclusion of the trial to avoid their depreciation.

Land

The two pieces of land that were recovered in the Serwamba case were easier to manage since they were undeveloped. The prosecution secured restraint orders against the said plots and proceeded to place caveats on their titles. The plots were eventually confiscated and forfeited to the complainant Bank.

However, managing other real estate properties like farms, commercial buildings, homes etc. is more challenging. Again, it is advisable for African countries to adopt guidelines to streamline their management.

Commingled assets

One of the vehicles in the Serwamba case had been imported at approximately UGX 16,000,000 (about USD 4,600) before the crime was committed. Serwamba then used UGX 8,000,000 (about USD 2,300) of the proceeds of crime to clear taxes for the vehicle, thus raising the complex issue of commingled assets.

The prosecution took the approach that the entire vehicle amounted to proceeds of crime while the defence argued that only the UGX 8,000,000 used to clear taxes on the vehicle was recoverable. The court, in this case, treated the entire car as proceeds of crime and ordered its confiscation.

How to handle commingled assets will depend on the facts of each case and the laws of each country in this regard.

Wider considerations for money laundering cases in Africa

Witness protection

In the Serwamba case, the prosecution had to rely on about five accomplices as prosecution witnesses. However, Uganda does not have a witness protection law or programme. The arrangement with these accomplices was therefore based on a “gentleman’s agreement”. The security of such witnesses is potentially at risk before and after the trial.

The use of accomplices as prosecution witnesses

inevitably continues to be a common feature in money laundering prosecutions in Africa. However, only a few countries on the continent have witness protection laws and fully-fledged witness protection programmes.

If witness protection measures do not yet exist in a country, policy makers in that country should consider establishing them. Witness prosecution is an essential requirement for the successful prosecution of money laundering cases.

Digital forensics

The majority of money laundering cases inevitably make use of digital devices like mobile phones and laptops. The Serwamba case, for instance, involved a WhatsApp video with some of the conspirators posing with the recently stolen bundles of US dollars. It also involved a forged email purportedly sent by the Juba branch manager to Serwamba indicating that the two account holders were to make transactions in Kampala.

These aspects of the evidence were not subjected to digital forensics analysis. The digital forensics capacity of most African countries is still very low. It is important that African countries enhance their digital forensics capacity, as this will be an essential aspect in the successful prosecution of money laundering cases.

Regulation of cash purchases

In many African countries, it is still possible to purchase expensive commercial buildings or vehicles using cash. In the Serwamba case, the suspects paid for the plots of land and vehicles in cash. The use of cash to purchase such assets makes the investigation more complicated since it is difficult to follow the money trail.

Policy makers should consider establishing laws that require the purchase of assets like real estate and vehicles to be made through bank payments. Accordingly, the due diligence conducted by financial institutions before accepting such cash to be banked would be the first layer of protection.

Criminals would therefore find it more difficult to

launder their ill-gotten money, and following up the proceeds of crime would be easier.

Financial investigations training

Money laundering is still a relatively new concept to many stakeholders in the criminal justice system in Africa, an observation borne out during numerous ICAR training workshops. Moreover, effective financial investigations require the involvement of detectives with a broad skillset and the necessary training in financial investigations.

Training police detectives, prosecutors and judicial officers in asset recovery and financial investigations should be a recurrent activity.

Keywords

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Digital forensics

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