

CRIM.CASE NO.20/99

In the matter between:

THE KING

VS

MUSA KHEHLA HLATSHWAKO

CORAM:

MASUKU J.

For the Crown:

MR J.W. MASEKO

For the Accused:

MR S.V. MDLADLA

JUDGEMENT

19/7/00

The accused stands before me charged with the crime of theft, it being alleged that the said accused person, whilst employed as the Customs and Excise Controller of the Department of Customs and Excise, Mbabane Railway office, and as such a servant or agent of the said Department of Customs and Excise, he was entrusted with the custody and care of money which belonged to his employer or which money came into his possession on account of his said employer, the accused person did, during the period 17th July, 1997, to 19th September, 1997, and at or near Mbabane, Hhohho District, unlawfully and intentionally steal some of the said money, thereby causing a general deficiency of E42,630-68, the property or in the lawful possession of the said Department of Custom and Excise.

The accused pleaded not guilty, a plea which was confirmed by his attorney. The Crown adduced the evidence of five (5) witnesses in support of the indictment, and whose testimony will chronicled herein below.

PW 1 was Captain Phillip Stander a member of the South African Police Service, attached to the Questioned Documents Unit since 1993. Captain Stander holds qualifications in questioned documents and is therefor regarded as an expert in this field. He testified that

in April, 1998 he received certain documents from the Royal Swaziland Police (R.S.P.) in respect of this matter and from which he made a positive finding but did not have enough specimen documents in his possession in order to enable him to make a concrete finding.

He therefor requested some more documents from the R.S.P., which request culminated in R.M. Mthimkhulu of the R.S.P. delivering an envelope containing disputed signatures, which PW 1 received on the 16th March, 2000. It was his further evidence that he compared two sets of documents, namely, handing over certificates, which were disputed and also the accused's leave forms which were collected signatures. PW 1 testified that in his opinion the author of both sets of documents was one person, and that the probability in favour of that opinion was 95%+ stronger.

In cross-examination, PW 1 was asked if his view that there was a 95%+ probability that there was one author, then there is then a chance that the author, is not the same. In response, it was PW 1's evidence that there is 5% that the accused is not the author and 95% that he is. He stated further that if he had had more collected specimen, a stronger finding would have been made.

PW 2 was Phephisiwe Annah Dlamini, the accused's subordinate at the Railway office. She testified that she was employed at the Railway office as a Customs Officer, whose duty it was to update the date stamp, check the numbering machine, check in-coming trucks from South Africa, check the I.C.A. forms and to ensure that the same were in order. It was also her duty to receive cash and cheque payments from traders and to keep the money collected in a cash box which she would lock. At the end of the day, she would hand over the cash and cheques to the accused, who was the Controller.

It was her further evidence that before handing over the cash and cash book to the accused, she would prepare and sign certain handover certificates which the accused would also sign in PW 2's presence if the money over handed over corresponded with the amounts reflected in the cash book. She would then take copies of the hand over certificated (H.O.C.) and the accused would also keep his own. She further testified that the accused was also responsible for banking the money collected.

PW 2 was shown five H.O.C's, which she said she recognised and testified that the accused and herself both signed them. The details reflected thereon are as follows:

NO	DATE	CASH/CHEQUE	AMOUNT
1	18/7/97	cash	E 762.80
2	28/7/97	cash + cheque	E3 918.75
3	1/8/97	cash	E1 216.20
4	16/9/97	cash	E 704.40
5	19/9/97	cheque & cash	E3 498.64

She confirmed that the signatures reflected on the H.O.C. were the accused's and that she recognised his signature as she had worked harmoniously with him for a period of eight months. She further testified that after handing the money over to the accused, she did not have access to it as he locked it in a safe.

In cross examination, she was asked if the amount collected between the dates recorded above was reflective of the total and she testified that she is not certain as she attended a course at the Swaziland Institute of Management and Public Administration (SIMPA) between 4th August and 5th September, 1997 and left the accused to do the work on his own. She was further asked if from the amount of E42, 630.68 reflected in the charge sheet less the amount reflected in the H.O.C. someone else collected the money. Her response was that certain receipt books were not located when an audit of their duty station was conducted and she would therefor not be in a position to know the answer. She further testified that she normally collected the money and the accused collected the money on a few occasions as he worked outside the station on most days, returning late in the afternoon.

When asked by the Court, PW 2 stated that she did not keep any keys to the safe but the accused alone did so. She further told the Court that the accused always returned and there was no occasion when she had to keep the money at the end of the day.

PW 3 was Thandabantu Nxumalo the Internal Auditor of the Department. It was his evidence that his duties entail inspecting all the Department's books of account as one of the Government's collectors of revenue. He also has to ensure that revenue is properly collected, banked and also ensure that all stipulated financial and other procedures are religiously followed.

It was his evidence that on the 13th, 16th and 22nd September, 1997, he carried out an audit inspection of the accused's station and submitted a report of his findings. That report was read out and reflects the following:-

That on the 15th, 16th and 22nd September, 1997, PW 3, accompanied by Doreen Hlatshwayo carried out an audit inspection at the Railway Station, where the accused was Controller. The auditors introduced themselves to the accused as such and they requested to inspect the stock register, whereupon the accused informed them that it was not maintained at that Station. When referred to an earlier inspection, carried out on 30th September, 1996, which stated that such a register was maintained, the accused then told the auditors that they could not get the register because he had given it to someone else, together with other documents and receipt books. For that reason, the auditors could not determine the stock of receipts on hand.

The auditors could also not determine the last submission to the revenue office because the accused failed to produce the file in which collectors receipts and other accounting records are filed. The accused informed the auditors that the file was in the custody of somebody in town.

The auditors also established that total cash on receipts was E68 305.11 and the cash on hand, which included coins and cash on bank slips was E25,674.43 and the amount unaccounted for was E42,630.68. The auditors asked the accused about the whereabouts of this money and the accused confessed that he had misappropriated the money. This PW 2 confirmed in his evidence, adding that the accused told them that he used the money for something else.

A litany of breaches of financial and accounting regulations was discovered by the auditors but which are not the subject of this enquiry. Certain recommendations were made in respect of the issues cited above and the other infractions to the Commissioner of Customs and Excise for appropriate action.

PW 3 also testified that they also noted a number of discrepancies regarding the due completion of the C.C.A. forms and when confronted about these, the accused failed to give a satisfactory explanation. Deposit slips pertaining to cash deposits and the general receipt book were handed in as part of PW 2's evidence.

In cross-examination, PW 3 stated that on their arrival on the 15th September, 1997, PW 2 was the officer they found on the premises as the accused was reported to be at work at Sidwashini, Interfreight depot. PW 3 said they waited for the accused's arrival. PW 3 was asked if he was aware that the accused had been left to man the station on his own because PW 2 attended a course at SIMPA. It was PW 3's evidence that this was not brought to the auditors' attention, and that the accused never informed them of this and that had he informed them, this would have been reflected in the report.

It was put to PW 3 that the report was compiled without calling the accused to answer and this PW 3 vehemently denied. PW 3 insisted that the procedure is that the auditee is always present when an audit is carried out and that the auditee is asked questions. He stated that the audit team cannot proceed in the absence of the auditee. PW 3 further denied that the accused was not there and that upon his arrival, the auditors already had the documents in their possession. It was further suggested to PW 3 that the accused explained that the auditors found the books in disarray because at one stage the accused was left alone to man the office. This PW 3 stated was never explained to them by the accused. It was also put to PW 3 that the accused did not dispute the signatures in question because he was not afforded an opportunity to present his case. This PW 3 denied, maintaining that the accused was afforded every opportunity to explain. PW 3 further denied that the documents were perused in the accused's absence as suggested. It was his evidence that the accused was present throughout.

Mr Mdladla further put to PW 3 that the accused denies that the signatures on the receipt book are his to which PW 3 stated that the accused never denied them during the inspection. It was stated further that the accused denied ever admitting that he had misappropriated funds from the station. PW 3 stated that the accused did confess and as a result this fact was recorded in the report.

PW 4 was Nonhlanhla Eunice Mngomezulu a Senior Accountant, who is employed by Government at the Revenue Section at the Treasury Department. It was her evidence that her office issues receipt books to sub-collectors, including the accused's station. She confirmed that the receipt book in issue Exhibit "G", bearing serial numbers 162401 to

162500 was issued by her office to the accused's station. In this regard, PW 4 handed in a sheet from the stock book which confirmed that such a receipt book was issued to the accused's station on the 27th June, 1997 and was signed for. PW 4 confirmed that she knew the accused and that he used to come to her office to collect receipt books for his station.

In cross-examination, PW 4 stated that she did not personally know who had issued exhibit 'G' to the station in question. She further stated that she did not know therefore to whom the receipt book was given. When asked what she would say if the accused would deny having collected Exhibit 'G', PW 4 stated that according to her knowledge the accused was the only person known to collect receipt books for his station and if he did not collect Exhibit 'G', he should be in a position to say who had done so. PW 4 further stated that as a matter of procedure one person is always designated to collect receipt books and if that person is for some reason unable to do so, he informs the Treasury Department as to who will collect the receipt books so that the Department may know. She testified that strangers may not collect these.

The last witness for the Crown PW 5, was Caiphus Vusumuzi Msibi, the Personnel Officer stationed at Customs and Excise Department head quarters. He testified that he knew the accused as the accused was in his Department's employ. PW 5 handed in some leave application forms in respect of the accused. It was PW 5's further evidence that the accused had applied for leave using the said forms, and the same were signed by the accused. He further confirmed that these forms were obtained from the accused's personal file maintained by the Department of Customs and Excise, which were in his custody and care. The defence put no question to this witness.

At this stage, Mr Mdladla moved an application for the acquittal and discharge of the accused at the close of the Crown's case, which application I then dismissed. Section 174 (4) of the Criminal Procedure and Evidence Act No.67/1938, under which this application was moved states as follows:-

“If at the close of the case for the prosecution, the Court considers that there is no evidence that the accused committed the offence charged or any other offence of which he might be convicted thereon, it may acquit and discharge him.”

The Legislative nomenclature clearly shows that the Legislature gives the trial Court the discretion to decide whether or not to grant an application for acquittal and discharge, depending upon the particular attendant circumstances of the case. The test to be applied in considering whether a discharge is competent was stated by Dunn J. in the **KING v DUNCAN MAGAGULA AND 10 OTHERS CRIM. CASE NO.43/96** as being whether there has been led evidence on which a reasonable man acting carefully might and not should convict.

In support of the application, it was the contention of the defence that no link had been created by the Crown between the accused and the offence. It was contended that the Crown failed to prove that Exhibit 'G' was in the accused's possession and the accused

signed it. Furthermore, it was submitted that PW 2 failed to adduce evidence to prove the Exhibit 'C' was used by her at the station.

It cannot be said, due regard being had to the nature of the evidence led that no evidence was led by the Crown showing that the accused had committed the crime where with he is charged, or any other offence of which he might be convicted.

There is a clear nexus between the charge and the accused. It was not denied that the accused was in control at the material time i.e. when the money disappeared. Further, PW 2's evidence was clear that it was the accused, during the material time who was responsible for the safe-keeping and banking of the money and also signed handover notes acknowledging receipt of money. The evidence of PW 3, regarding the accused's admission of misappropriating the money is also evidence linking the accused to the offence.

The Crown, in its evidence regarding the receipt book proved that it was issued by the Treasury Department to the Railway Station. PW 3 confirmed that he found it at the station being used when he was carrying out the audit inspection. The accused, from the questions posed to the Crown witnesses does not appear to deny handling the money neither does he say what he would have stated had the hearing which he denies been afforded to him. It is also worthy of note that the money in respect of which the accused stands charged was obtained from source documents obtained from the station where the accused was in charge. It was for these reasons that I came to the view that the application lacked substance and was liable to be refused.

A reviewal of the Crown's evidence in my view leads to only one conclusion. The Crown gave good, reliable and credible testimony. The evidence was adduced by the Crown witnesses in a forthright manner. The Crown's witnesses in my view never wavered and showed great fortitude even under cross-examination. I therefor have no hesitation in accepting their evidence, which was given in an impartial manner as true. Their evidence was in my view without blemish.

The accused gave sworn testimony, led by his attorney. The accused informed the Court that he was employed by the Department and had been so employed for more than twenty (20) years. It was his evidence that he was Controlling Officer (C.O.) at the Railway station when he was suspended. His duties as head of the station entailed overseeing issues relating to import and export of goods, checking if trucks had properly declared goods being imported into the country, taking custody of official stamps and also to keep files and collectors receipts and the keeping and banking of the money collected.

It was his further evidence that on the 15th September, 1997, on arrival from Interfreight, he found PW 2, PW 3 and one Doreen Hlatshwayo in the office with the General Receipt Book, C.C.A. forms and cash books which they were using. The accused greeted them and proceeded to do his work as there was a truck he had to check outside. He testified that the procedure relating to Internal Auditors was that they do not wait for C.O. if the key to the station is available.

It was his evidence that the auditors never asked him to be present during the audit nor to explain anything to them. He received a telephone call from one S.S Dlamini summoning him to the headquarters where he was told to go on leave because there were certain

mistakes or anomalies at the station. He was never asked to address the aforesaid queries. On expiry of the leave days, the accused was given a letter of transfer to the Inspection Department where no report of his activities at the previous post were mentioned. It was his evidence that only faithful people are employed at the Inspection Department to which he had been transferred.

He further testified that in September, 1998, a Police Officer by the surname of Ngwenya arrested him and he was taken to Court where he was admitted to bail. He therefor continued to work until his suspension as aforesaid.

It was the accused's further evidence that after the audit inspection, he did not look at the books of account because the auditors came with their own receipt book, used it and took it away. The accused admitted that it is true that some of the accounting instructions and procedures had been flouted by him and attributed this to the fact that he was left to do all the work alone when PW 2 attended a course at S.I.M.P.A. He admitted that he was responsible for collecting general receipt books from the Treasury Department but denied having collected Exhibit 'G'. The accused further testified that he was never asked by the auditors about the money and he denied having admitted to embezzling the money.

The accused was also shown Exhibit 'G' which he perused, stating that he did not know any of the signatures thereon. He stated that he could see two different signatures appended thereon but none of them was his.

The accused lifted the shield during his examination in chief by stating that only trustworthy persons are employed at the Inspection Department. In cross-examination, the accused stated that he considered himself as a trustworthy person. Having lifted the shield, it then transpired that the accused was once posted to Nsalitje Border Post in 1985 and he left as a result of some money that went missing. As a result, criminal proceedings were instituted and the accused was acquitted on a technicality. It further transpired that the accused was transferred to Sicunusa where some money was misappropriated and he was surcharged therefor. When put to him that he was far cry from a trustworthy officer, the accused did not deny, contenting himself only in saying that he understands. I have warned myself against using this evidence to reach any conclusion regarding the accused's guilt or otherwise in this matter. The conclusion reached will be solely confined to the evidence led in this matter.

The accused was hopeless as a witness. His hopelessness was shown very early in his evidence in chief when he testified that when the auditors came, he was not in the office but found them perusing books of account and merely greeted them. He was hard pressed to explain why he did not take an interest in people who were perusing books at a station which he controls but gave an unconvincing answer. The accused further failed to answer clear and direct questions under cross-examination such that the Court was called upon on some occasions to direct him to answer the questions. He was fidgety and very uncomfortable both in his evidence in chief and under cross-examination.

In the case of **S V KELLY 1980 (3) SA 301 at 308 C**, it was stated that "Demeanour is, at best a tricky horse to ride. There is no doubt that demeanour...can be most misleading." In this case, the accused's demeanour in the witness box was in no way deceptive. It was reminiscent of what was stated by Osborne, "The Mind of the Juror" 1938, page 86,

namely:-

“The witnesses speak...not by words alone...Their faces and their changing expressions may be pictures that prove the truth of the ancient Chinese saying that a picture is equal to a thousand words.”

The defence case faced several insuperable difficulties over and above the accused's demeanour in the witness box. Firstly, the defence case was not fully put to the Crown's witnesses much against the well established principle propounded with absolute clarity by Hannah C.J. in **R v DOMINIC MNGOMEZULU AND OTHERS CRIM. CASE NO.94/90**, at page 17, where the learned Chief Justice as he then was stated as follows:-

“It is I think clear from the foregoing that failure by counsel to cross-examine on important aspects of a prosecution witness' testimony may place the defence at risk of adverse comments being made and adverse inferences being drawn. If he does not challenge a particular item of evidence, then an inference may be made that at the time of cross-examination his instructions were that the unchallenged item was not disputed by the accused. And if the accused subsequently goes into the witness box and denies the evidence in question, the Court may infer that he has changed his story in the intervening period. It is also important that counsel should put the defence case accurately. If he does not, and the accused subsequently gives evidence at variance with what was put, the Court may again infer that there has been a change in the accused's story.”

Examples of issues which were not put to the Crown witnesses and in respect of which the Court was entitled to assume were not challenged include *inter alia*:-

- a) It was not put to PW 2 or PW 3 that the procedure at the Customs and Excise Department is that the Internal Auditor does not wait for the Controller to be in attendance before he can proceed with his inspection unless the key is unavailable. This only surfaced in the accused's evidence in chief, much against PW 3's unchallenged evidence that he does not carry out the audit in the Controller's absence unless the Controller has delegated one of his subordinates to work with the auditors.
- b) It was never put to PW 3 that he and his colleague brought a receipt book with them and which they took away after conducting the inspection. This was only disclosed by the accused in his evidence in chief.
- c) It was never put to PW 2 that the accused had to attend to trucks or persons who had paid on a daily basis on his return from Sidwashini. This was also

stated in his evidence in chief when the accused was trying to explain why he did not attend to the auditors according to his version, namely that he had a truck to attend to.

d) It was never put to PW 3 that the Internal Audit Team proceeds to conduct its inspection with whoever is found on duty regardless of the absence of the controller.

e) The defence never put to PW 2 that the accused questioned her about what she was doing with the auditors. In his evidence in chief, the accused stated

that he questioned her and her answer was that they were just working as they were required to ascertain if the money balanced. The importance of this was that PW 2 and PW 3 stated that the accused was present during the inspection and he was asked to explain certain anomalies.

Based on the above cited dictum, I am entitled and do hereby draw an inference that there was a change in the accused's story. The issues raised above were important to put to the Crown witnesses in order to put the accused's case in its proper perspective to the Court. That these were only raised in chief is susceptible to only the one interpretation stated above.

I have also come to a conclusion that the accused lied in respect of certain matters and proceeded to contradict himself on others. In his evidence in chief, he testified that the Receipt Book, Exhibit 'G', was brought onto his station by PW 3 but under cross-examination he conceded that he may have handed the said Exhibit to PW 3 to enable him to conduct an inspection.

The accused also lied when he said that he was not present during the audit inspection. His presence and participation was confirmed by the evidence of PW 3, who was impressive as a witness and was honest in my view. The accused's story is that he went into his office and found PW 2 with internal auditors and merely greeted them. He then went to attend to a truck outside. When asked what he did about people working at his station he said he asked PW 2 but never asked PW 3 because he (accused) was busy. This is an unacceptable explanation.

PW 3's evidence is that the accused was present during the inspection and was asked certain questions which he answered. Certain books were found missing and the accused gave an explanation. The absence of some of these books was also confirmed by PW 2 and she was not contradicted by the defence in this regard. The accused accepts that there were anomalies which were recorded in PW 3's report but insists that he was not there during the inspection. The accused was very uncomfortable when answering questions regarding this issue and was evasive. I find for a fact that he was asked questions as stated by PW 3 and his answers were recorded. It is worth noting that if his story is accepted that he was not given a hearing by the auditors and the Commissioner, he does not state what it

is that he would have stated to them to challenge PW 3's report or the anomalies attributed to him.

There are excerpts from the cross examination of the accused which demonstrate his lies. I propose to refer to a few of these as recorded in my notes.

Q: I put it to you that on that day, PW 2 handed over E3,498.64, which includes a cheque of E626.04.

A: I cannot recall. She may have handed the money over.

Q: I suggest that this amount is confirmed by the hand-over certificates which she signed and you also signed declaring receipt of the amount

A: I did not sign there

Q: There is no way that PW 2 could have manufactured this document with your signature as you acknowledge being at work on that day and receiving the amount.

A: I may have taken this money but not as indicated in this document, *(This question had to be asked three times. Eventually, the following answer was tendered.)*

I agree she could not manufacture the hand over certificates.

Q: I put it to you, she could not have manufactured the others, especially those dated 18/7, 16/9, 1/8, 1997 and 28/7/98, especially because of your evidence that you would always come back to the station and never went on leave.

A: I agree. She could not have manufactured them.

Q: At the close of business of each day, you would put away the stamps and general receipt book

A: Yes.

Q: PW 3 told the Court that he received Exhibit "G" from you before inspection

A: I never gave a General Receipt book to PW 3

Q: I suggest that there is no way or reason which PW 3 would plant Exhibit "G" because these were locked in the safe everyday.

A: True. However, I do not remember giving him a General receipt book

Q: You agree that you may have given him but do not remember

A: Yes.

Q: I put it to you that there is no way in which PW 3 would have had access to the books as stamps are affixed thereon and you collected and locked the stamps at the close of business.

A: I agree.

Q: I put it to you that Exhibit "G" was handed to PW 3 and he used it to discover the deficiency as alleged in the charge sheet.

A: I agree that it was issued to my station but I did not fetch it from the Treasury Department.

It is clear from the foregoing that the accused's evidence was now changing. His earlier evidence was that he had not dealt with PW 3 but from the excerpts it is clear that he did. Earlier he denied knowledge of the receipt book but later agreed that it was at his station. His evidence is therefor not worthy of credit.

From the evidence, it is abundantly clear that the accused was employed by the Department and that he was station controller when the deficiency occurred. As C.O., he was responsible for the custody and safety of the money and was also responsible for banking it. The uncontroverted evidence is that PW 2 collected the money and handed it over to the accused together with the cheques. The accused kept these in a safe of which he only kept the key.

There was therefor no opportunity for PW 2 or any other person to interfere with the safe nor was it suggested to PW 2 that she or another person had access to the safe. No queries were raised by the accused to PW 2 in which she was suspected to have been responsible for the disappearance of the money.

I reject as false that the receipt book was brought by PW 3. The receipt book was issued to the accused's station and he and PW 2 were receiving money evidenced by their signatures appended thereon. The accused's denials of the signatures thereon are nothing but an exercise in futility. I say so because of the compelling evidence of the Crown's expert evidence adduced by PW 1 regarding the questioned and collected signatures. His finding was that one person wrote both. I have also taken time to compare the signatures on the receipt book, the stock register and those on the leave forms and hand over certificates. I have no hesitation to say that these were signed by one person save that he abbreviated the signature in the receipt book and the stock register. This is so plain that no expert witness is even necessary to state. His denial of these signatures, which was done half-heartedly amounted to nothing other than an attempt to deflect the course of justice. It is also worthy of note from the excerpts from my notes that the accused eventually agreed that PW 2 could not have manufactured the H.O.C. and therefor could not manufacture the signatures thereon.

Furthermore, the accused admitted that PW 3 could not have planted the receipt book in question and further stated that he could have given the receipt book to PW 3. If the accused denied the signatures both on the H.O.C. and the receipt book, he should have done so during the audit. His failure to do so is only consistent with PW 3's evidence that the accused admitted misappropriating the funds in question.

When handed the receipt book to look at the signatures, he hurriedly went through the book without taking the requisite painstaking care and diffidently stated that he did not know the signature thereon. It was clear that he was lying.

There is also the evidence of PW 3 that the accused admitted to have misappropriated the money. This evidence, the accused failed to sufficiently explain. Contrasting the two pieces of evidence i.e. that of the accused and PW 3, the latter's should stand, regard being had to his impressive demeanour in the witness box. The same cannot be said of the accused and I am therefore constrained to admit PW 3's evidence as true. PW 3 could not manufacture that piece of evidence and proceed to tell a fanciful story that certain books were not found and the accused said they were with some person in town if that was not the case. PW 3 had nothing personal to gain by adducing the evidence that he did nor was it suggested to him. It is not disputed that many accounting instructions were not followed by the accused which is an indication that all was not well at his station. This, considered in the light of the other evidence led places the accused in a precipice.

In the case of **MILLER v MINISTER OF PENSIONS 1947 (2) ALL E.R. 372 at 373 (K.B.D.) G – H**, Denning J. summed at the position as follows:-

“...there is a compelling presumption in the man's favour which must prevail unless the evidence proves beyond reasonable doubt that the disease was not attributable to or aggravated by war service, and for that purpose the evidence must reach the same degree of cogency as is required in a criminal case before an accused person is found guilty. That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible, but not in the least probable', the case is proved beyond reasonable doubt, but nothing short of that will suffice.”

In this case, I find no possibilities ensuring to the accused's favour. The accused was solely and directly in charge of the money which went missing and confessed that he misappropriated it. His subsequent denial is a feeble and unconvincing attempt to avoid facing the natural consequences of his action. His account is palpably false and cannot, with exercise of the greatest benevolence be regarded as reasonably possibly true. I accordingly find him guilty as charged and it is so ordered.

T.S. MASUKU
JUDGE