**Kyewawula v Uganda**

**Division:** High Court of Uganda at Kampala

**Division:** High Court of Uganda at Kampala

**Date of judgment:** 30 January 1974

**Case Number:** 239/1973 (98/74)

**Before:** Nyamuchoncho J

**Sourced by:** LawAfrica

*[1] Criminal Law – Theft – Currency note no longer legal tender – Not capable of being stolen.*

**JUDGMENT**

**Nyamuchoncho J:** The appellant, Jane Kyewanula, was convicted of the offence of stealing by a public servant contrary to ss. 257 and 252 of the Penal Code. It was alleged by the prosecution that on 26 April 1973, she stole cash of Shs. 1,300/- in old Uganda currency belonging to Uganda Government which came to her possession by virtue of her employment. The facts as gathered from the evidence on record are that the appellant was an employee of the Bank of Uganda at its Currency Board Jinja. The Jinja Currency Board had 4 boards with at least 7 ladies on each board; each board had a supervisor. The appellant worked on board No. 4 with 7 or 8 other ladies under the supervision of Mrs. Kalema. The ladies’ job was to count old currency notes. They followed a simple procedure. The procedure was that the currency officer handed a sealed bag to a supervisor. The supervisor signed for it to show that it was correct then the supervisor opened the bag in front of the ladies under her charge, she took out a bundle of notes containing ten sub-bundles consisting of 50 notes each. After spreading the bundle out, she distributed the sub-bundles to each member of the board. Each member counted the 50 notes. She made a mark and signed and passed it on to another lady for re-checking. The second checker went through the sub-bundle using the same procedure. On 26 April 1973, at about 2.30 p.m. Mrs. Kalema received from Mr. Musoke, the currency officer, one sealed bag containing old Uganda Currency notes. She opened the bag and took out a bundle of 100 old currency notes of the denomination of 100/-. She distributed it in sub-bundles to the ladies under her charge on board No. 4; the first checking was carried out by Mrs. Odongo who, after signing for it passed it on to the appellant, the appellant rechecked the sub-bundle, found it correct, signed and then wrapped it with a rubber and placed it on a table. As the counting progressed the appellant asked for permission and went to the toilet. While she was there Mrs. Kalema told the ladies to collect the bundles for punching and burning. At this moment Mrs. Kalema noticed that one of the bundles was smaller than the others. She checked the small bundle and found it had 13 notes less. She handed the bundle to Mrs. Ocheng who also checked it and found it had 13 notes missing. By then the appellant who had already returned from the toilet was ordered to recount the bundle. She counted it and found 13 notes missing. This was a bundle earlier checked and signed by her. The appellant was suspected of having stolen the missing notes. A police woman Oliva Mary Mayanja was called in. She carried out a search on the appellant and found the 13 missing notes in the appellant’s hand-bag wrapped in a toilet paper. The appellant was arrested and charged with the offence of stealing cash – Shs. 1,300/- in old currency notes. She was tried, convicted and sentenced to 13 months imprisonment. She now appeals against her conviction and sentence. Mr. Kayondo, counsel for the appellant, put forward eight grounds of appeal. The first three grounds are directed against the charge as framed. It is contended that the charge was defective and bad in law as it used the word “cash Shs. 1,300/-” in Uganda old currency notes which had no monetary value. I will come back to these grounds later. In the fourth ground of appeal, Mr. Kayondo argues that the trial magistrate erred in holding that the prosecution had proved its case beyond reasonable doubt in spite of the conflicting and unsatisfactory evidence of the prosecution witnesses. I will not consider grounds 5–6 for the purpose of this appeal. I will deal with the fourth ground of appeal first. Mr. Kayondo contended that the evidence adduced by the prosecution was unsatisfactory and did not warrant a conviction to be based on it. I cannot agree with that. There is ample evidence on record very well summarized in the judgment of the trial magistrate to show that the appellant stole the missing notes. The notes were found in her bag on being searched. It is true there were discrepancies between the evidence of certain witnesses, but these discrepancies are not so material as to dislodge the fact that the missing notes were found in the appellant’s handbag. The trial magistrate was justified in holding that the appellant stole the missing notes. I see no reason to differ from his finding. I now turn to the first three grounds of appeal, these are: 1. T hat the trial magistrate erred in law in convicting the appellant of theft of cash Shs. 1,300/-; 2. t hat the charge was defective and bad in law; 3. t hat the trial magistrate erred in holding that the stolen property had a monetary value or any value at all and further erred in convicting the appellant on this erroneous finding. It will be observed that the charge-sheet alleges that the appellant stole cash Shs. 1,300/- in Uganda old currency the property of the government. There is no evidence on record to show that the missing notes were the property of the government, according to the evidence, these bundles of notes came from Commercial Banks in Jinja which sent them to the Bank of Uganda. They were not paid in by the Uganda Government. They were not issued by the Uganda Government either. By s. 14 of the Bank of Uganda Act 1966 (hereinafter referred to as the “Act”), the Bank of Uganda has the sole right to issue, reissue and exchange bank notes, the Uganda Government has no such right. By s. 16 (3) of the Act, the Bank of Uganda has power to call in any of its bank notes and coins. It is under this provision that the missing notes found their way in the Currency Board Jinja. In my view it was wrong to describe the notes as the property of the Uganda Government. What was the value of the missing notes? Could they be properly described as “cash Shs. 1,300/-” because in the old currency notes they were worth Shs. 100/- each? Mr. Tsekooko for the respondent, submitted that these notes had some value to the Bank of Uganda, he urged me to accept the testimony of the currency officer as to the value of the notes. A bank note is defined in Halsbury’s Laws of England, Vol. 23, p. 182 as: “a bill or note for payment of money to the bearer on demand issued by a bank”. “Cash” is defined in Oxford Dictionary as “current”, as “ready money”. “Money” is defined in Oxford Dictionary as “current coin: coin and promissory documents representing it”. S. 4 of the Penal Code also defines money as “including bank notes . . . for the payment of money”. S. 23 of the Trial on Indictments Decree 1971 (see also 186 (*c*) (iv)) states “bank notes, and currency notes may be described as money; and any allegation as to money, so far as regards the description of the property shall be sustained by proof of any amount of any bank or currency notes etc.” According to the definition of bank note in Halsbury’s Laws quoted above a bank note is a note for payment of money. This definition presupposes that such note is legal tender. Under s. 16 (3) of the Act the missing notes had ceased to be legal tender. They ceased to be legal tender at the close of business on Friday 9 February 1973. On the day they were stolen, 26 April 1973, they were just about to be destroyed as they were no longer legal tender; so that on the day they were stolen they were neither bank notes as defined in Halsbury’s Laws or cash or money as defined in Oxford Dictionary. Mr. Musoke in cross-examination, deposed that the stolen notes had no monetary value as far as the public was concerned. Mr. Musoke, however, alleged that the stolen notes had value to the Government. I doubt it. To begin with, the stolen notes did not belong to the Government, they belonged to various Commercial Banks, and judging from the fact that they were about to be destroyed the Commercial Banks had no longer any pecuniary interest in them they were useless as far as these banks were concerned. Secondly, the Government could not use them as money since they had ceased to be legal tender. Mr. Musoke, in trying to justify his statement that the missing notes had some value, went on to describe a procedure through which one could obtain a refund he said: “once the money is redeemed from circulation, the Bank of Uganda has the duty to keep this money because an equivalent can be refunded through the currency officer to general manager of the Bank of Uganda and then to the Governor and then the Governor will forward the matter to the Minister of Finance and the latter may refer the matter to the President who then may give a final decision on the matter”. This procedure is contrary to and conflicts with the provisions of s. 16 of the Act. Even if I accept the fact that a refund could be effected in the way described by Mr. Musoke, I still believe that it applies to the notes which had not been redeemed from circulation by the Bank of Uganda, and not to the notes which have been redeemed. I consider Mr. Musoke’s testimony relating to the procedure for obtaining a refund from the printers in London to be nothing but speculative. I cannot see how the Government could convince the printers that they had notes to the value of Shs. 10,000/- which have already been turned into ashes. The evidence adduced to prove that the stolen bank notes had some value did not prove any value of any single note at all. It did not relate to those stolen bank notes whose value had already been redeemed. To form a subject of larceny the thing stolen must have some value. Only economic value is taken into account. The value may be great or small so long as it has some actual money value for some person or persons – Kenny, para. 269. In this case the stolen notes had no money value for any person including the Government. They could not be described as money for they represented no money. Maybe they could have been used as a device to steal an equivalent number of notes of the new issue from the Bank of Uganda, which is a different matter but that in itself does not place any value on them or enhance their value when there is none. They still remain valueless. At the time they were found with the appellant, she had not yet taken a step to present them for exchange for the new issue to form the charge of an attempt to steal. A bank note which is not legal tender has been held not to be subject of an indictment for stealing *R. v. Clark* (1810), Russ. and Ry. 181 C.C.R. In this case the prisoner was tried on six counts. The first three counts which are relevant to this case, charged the prisoner with: 1. s tealing 135 promissory notes for the payment of £1 each value £1 each; 185 promissory notes for the payment of £5 each/value £5, and 77 promissory notes for the payment of £10 each value the property of Joseph etc. . . . 2. T he second count was the same as the first only laying the notes to be the property of Timothy Brown etc. . . . 3. T he third count was similar to the first only laying the notes to be the property of Williams etc. . . . It was held that stealing reissuable notes after they have been paid and before they have been reissued does not subject the party to an indictment for stealing notes but he may be indicted for stealing paper. *Clark’s* case seems to cover the situation in this case, the only difference being that the notes in *Clark’s* case could be reissued. There was such possibility. In this case the notes had to be destroyed. For the reasons stated above and following *R. v. Clark*, I consider that the stolen notes had ceased to be legal tender and could not be described as money. The sum of Shs. 1,300/- placed on them is erroneous, the stolen notes did not represent that sum, they were nothing but waste paper. This waste paper was the property of the Bank of Uganda and not of the Uganda Government. The Bank of Uganda placed no further value on them after they were redeemed. In my opinion the charge as framed was defective and bad in law. I quash the conviction and set aside the sentence passed on the appellant.

*Appeal allowed.*

For the appellant:

*H Kayondo*

For the respondent:

*JWN Tsekooko*