IN THE SUPERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL

ACCRA

CORAM: - SENYO DZAMEFE, JA (PRESIDING)

AMMA GAISIE, JA

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NOVISI ARYENE, JA

Civil Appeal

Suit No: H2/13/22

26th January, 2023

EUGENE ASIAMAH BOADI - APPELLANT

VRS.

THE REPUBLIC - RESPONDENT

JUDGMENT

DZAMEFE, JA

The accused/appellant was charged with the following;-

COUNT ONE

STATEMENT OF OFFENCE

FRAUDULENT BREACH OF TRUST CONTRARY TO SECTION 128 OF THE CRIMINAL OFFENCES ACT 1960 (ACT 29)

PARTICULARS OF OFFENCE

Eugene Asiamah Boadi; Chartered Accountant: Between September and December 2015, in Accra, in the Greater Accra Region, did dishonestly appropriate an amount of One Million, Five Hundred Thousand United State Dollars ($1,500.00.00), which was vested in you as a Trustee on behalf of Abena Nyantakyi.

COUNT TWO

STATEMENT OF OFFENCE

MONEY LAUNDERING CONTRARY TO SECTION 1(1) (C) OF THE ANTI MONEY LAUNDERING ACT 2008 (ACT 749)

PARTICULARS OF OFFENCE

Eugene Asiamah Boadi; Chartered Accountant: Between September and December 2015, in Accra, in the Greater Accra Region, used the sum of One Million, Five Hundred Thousand United State Dollars ($1,500.00.00), knowing it to be proceeds of crime.

BRIEF FACTS AS GIVEN BY THE PROSECUTION

The complainant in this case is the General Manager of Airport West Hotel (AWF) whilst the accused person is the Chief Executive Officer of Met Capital Finance Ltd. (MCF).

In September 2015, the complainant engaged the services of the Director of Allegiance Capital Ltd, Nicolas Mbroh, to source funds for her to expand her business. Nicholas Mbroh introduced some investors but none of them could reach an agreement with the complainant. He then introduced the accused person, Eugene Asiama Boadi to help secure the funds for the complainant. The accused person informed the complainant that he had identified a company that could provide the funds but only on condition that a bank guarantee was issued in his name. The Royal Bank provided the required bank guarantee in the name of the accused upon the instructions of the complainant.

An amount of Two Million US Dollars ($2,000,000.00) was then transferred into the company account of the accused person. The accused transferred an amount of Five Hundred United States Dollars ($500,00.00) into the account of the Complainant and promised to pay the remaining One Million, Five Hundred United States Dollars ($1,500,000.00) in three (3) months. The accused person failed to transfer the remainder of the money on the due date and all efforts by the complainant to get him to bring the money proved futile.

On the 23rd January, 2017, the accused was arrested and he stated that he formed a consortium with Nicolas Mbroh and Charles Owusu Boamah of the Royal Bank to invest the One Million, Five Hundred United States Dollars ($1,500.00) for three (3) months so as to use the accrued profit to offset the loan interest before transferring same to the complainant.

According to the accused person, after giving the Five Hundred Thousand United States Dollars ($500,00.00) to the Complainant, he transferred Five Hundred and Fifty Thousand United States Dollars ($550,000.00) to an account on the instruction of Charles Owusu Boamah for a supposed oil business that never materialized. He also claims to have invested the remaining Nine Hundred and Fifty Thousand US Dollars ($950,000) in Dubai. The accused was released on Police Enquiry bail to produce documentation on his supposed investments to enable the Police complete investigations but he has failed to provide any such proof to support his claims.

He was therefore charged with the offences and put before this Honourable court.

The prosecution to establish its case called three (3) witness, the complainant Abena Nyantakyi, the Chief Executive Officer of the Borrower Company, Airport West Hotel, Detective Inspector Emmanuel Ansah Fianko stationed at the CID Headquarters Cyber Crime Unit and Nicholas Mbroh, an Investment Advisor and Director of Allegiance Capital Ghana Limited.

At the end of the prosecution's case, counsel for the accused person made a submission of no case. The trial judge overruled the submission and ordered the accused person to open a defence since to her a prima facie case has been established by the prosecution.

The accused person aggrieved by that ruling launched this appeal for same to be overturned by this court.

GROUNDS OF APPEAL

a. The learned trial judge erred when she held that the essential elements of the crime of fraudulent breach of trust and money laundering have been established by the prosecution.

b. The learned trial judge erred in law when she held that the accused/appellant is the same as MET Capital Group Limited, a licensed fund Manager approved by the Securities and Exchange Commission and National Pensions and Regulatory Authority.

PARTICULARS OF ERROR OF LAW

i. A limited liability company once incorporated becomes a separate legal entity and therefore is distinct from its owners as well as its officers.

ii. That the acts of a limited liability company can be attributed to an officer of the company when the said company is used as a sham or the said company is used by an officer to perpetuate fraud

c. The learned trial judge erred when she held that the accused/appellant entered into an agreement with the Complainant to transfer $1 Million dollars to the complainant's bank accounts upon receipt of the loan and after 3 months the remaining half be transferred.

d. The learned trial judge erred when she held that the accused/appellant secured the needed funding for the complainant and that same was secured by title documents of Airport West Limited.

e. That the learned judge erred in when she held that accused person/appellant was just a trustee to collect and hold the money for onward transfer to the complainant.

f. The learned trial judge erred when she held that the accused/appellant received an amount of US$2 Million for and on behalf of the complainant and subsequently disbursed an amount of US$500,000 to the complainant leaving the remainder of US$1.5 Million with the accused.

g. The finding by this Court that the accused/appellant misappropriated the sum of US$1.5 Million by forming a consortium and invested the money into another business outside the Agreement (Exhibit A) is not borne by the evidence on record.

h. That the learned judge erred when she held that MET Capital was to receive the loan on behalf of the Airport Wet and same had to be transferred into Airport West Hotel's accounts.

i. The learned trial judge erred in law when she held that the accused/appellant was required to produce sufficient evidence so that on the totality of the evidence a reasonable mind could have a reasonable doubt as to guilt.

PARTICULARS OF ERROR OF LAW

1. The burden of proof and persuasion as provided for in section 13 of the Evidence Act, 1975 (NRCD 323) was not applicable at the close of the prosecution's case.

2. The burden of proof and persuasion as provided for in section 13 of the Evidence Act, 1975 (NRCD) is applicable at the end of the case and not at the end of prosecution's case.

j. The ruling is unreasonable or cannot be supported having regard the evidence adduce at the trial.

k. Additional grounds to be filled upon receipt of the Record of Appeal.

HIGH COURT RULING ON SUBMISSION OF NO CASE BY ACCUSED

To understand the background of the case, I shall summarize the ruling of the trial High Court on the submission of no case application.

The court in its ruling stated that "*PW1 in search of capital to expand her hotel, AWH entered into a contract with MET capital. She tendered the investment loan Note between MET Capital and AWH as exhibit 'A'. That the accused brought on board Ultimate Finance and*

Union Savings and Loans. A bank guarantee of US$2.2 million was issued to ultimate Finance and USD 2.8 million to Union Saving and Loans.

The ruling said MET Capital was to give AWH initial amount of US$1 Million and the remaining amount within three months. Ultimate Finance transferred USD$500,000 to the AWH account at the Royal Bank in December 2015. According to the ruling the complainant testified that she demanded for the remaining US$500,000 as per the agreement but the accused, Mr. Mbroh (Her consultant) and one Charles Boamah pleaded with her to pay the remaining amount in three months. The court said "that after the three months she again contacted the trio for the remaining money but they kept giving excuses. That the accused finally said the money is lost.

That during a meeting with the accused in the presence of her lawyer accused said he invested the US$550,000 in Dubai when the guarantee was called in. That Charles Boamah also took US $550,000 and the remaining US$100,000 shared to officials of Royal Bank and other places."

Counsel for the accused in his submission of no case submitted that exhibit 'A' which in the loan agreement between MET Capital and AWH cannot be an instrument establishing a trust relationship between the accused and Airport West Hotel. That the accused only signed as the Chief Executive Officer of MET Capital. To this the learned trial Judge ruled "*I do not agree with the leaned Counsel for the accused person. Accused was the Chief Executive Officer of MET Capital. The evidence shows that the accused was the one who secured the needed funding for the complainant, Abena Nyantakyi who is the Managing Director of the Airport West Hotel*". **[Page 114 ROA].**

The trial judge ruled that MET Capital was to receive the loan on behalf of Airport West Hotel and same had to be transferred into AWH's account. The court ruled further that the accused, Chief Executive Officer of MET Capital was just a trustee, to collect and

hold the money for onward transfer to the complainant. The court said the accused entered into an agreement with the complainant to transfer US$1million to the complainant's bank accounts upon receipt of the loan and after 3 months the remaining half be transferred.

The court ruled that companies do not operate in a vacuum. They operate through humans and held that the accused received an amount of US$2 million on behalf of the complainant.

The court held also that the accused person misappropriated this money by forming a consortium and investing the money into another business not borne by the agreement exhibit 'A', between accused person's MET Capital and complainants Airport West Hotel. "And that this appropriation was dishonestly made – **[page 115 ROA]**

In the first place what is "*submission of no case"?* An accused in a criminal trial, at the end of prosecution's case, if he feels no case has been established against him by the prosecution because an element of the charge against him has not been established then he can make a submission of no case. The implication being that the trial court should not call upon him to open a defence since a "prima facie" case has not been made against him by the prosecution and so the trial must stop and he be acquitted and discharged. A "prima facie" case is that evidence led and established by the prosecution which on its own can merit a conviction.

Section 173 of Criminal Procedure Code 1960 (Act 30) regulates it; The law is that the evidence incriminating the accused which is adduced after the end of the case for the prosecution should not be considered in deciding on the guilt or innocence of the accused because the prosecution is expected to make a case which the accused will be called upon to answer, hence, if no case is made at that stage, the case for the

prosecution should be considered as having collapsed and the accused should be acquitted. Section 173 (supra) mandatorily requires that the accused 'shall' be acquitted if at the end of the case for the prosecution no case is established to require him to make his defence. In fact it does not leave any room for further trial where no case is made.

Donkor vrs. The State [1964] GLR 598 SC

Generally it is wrong for a trial court in a criminal trial to conclude that an accused peson is guilty merely from the facts stated by the prosecution. See **State vrs. Sowah & Essel [1961] GLR (Pt. 11) 743 SC.**

This is so because the evidence for the prosecution merely displaces the presumption of innocence but the guilt of the accused is not put beyond reasonable doubt until the accused has given evidence. The burden of proof required in a criminal trial is proof beyond reasonable doubt.

NRLD 323, Section 11 (2) states *"In a criminal action the burden of producing evidence, when it is on the prosecution as to any fact which in essential to guilt, requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of the fact beyond reasonable doubt"*.

In the instant appeal at the end of the prosecution's case counsel for the accused made the submission of no case to the court. It is pertinent to state that in a criminal trial, the court can only convict when the accused pleads guilty simpliciter or after listening to his defence if he so wishes to put up one.

It is sad to state, with all due respect to the learned trial judge, that at that stage of the trial, she had no jurisdiction to come to any conclusions nor make any deductions and findings based on the prosecution's evidence alone. She erred seriously as having no

jurisdiction when she made definite findings and rulings in the case against the accused at that stage of the trial for example where she held she does not agree to counsel for the accused's submission that the accused was not a party to the loan agreement, he only signed as the Chief Executive Officer of MET Capital. At that stage she had not yet heard the defence case and so was wrong in making definite findings against him – **[Page 114 of ROA]**

She also held that, the accused received an amount f US$2 million on behalf of the complainant, and misappropriated the money by forming a consortium and investing the money into another business not borne by the agreement, exhibit 'A'. She was again wrong in so doing. One wonders where she got that information from – **[page 115 ROA].** She continued to hold that "this appropriation was dishonestly made – **[page 115 ROA]**

The trial judge grievously erred by making those definite findings against the accused when she had not yet heard his side of the story. This will definitely prejudice the case. These alone disqualifies her from further hearing of the case.

In criminal proceedings the trial judge at the end of the prosecution's case has to determine whether a prima facie case has been established against the accused or not. Based on that determination the accused is either acquitted and discharged or called upon to open a defence. The judge is bound to listen to the defence of the accused to see whether his defence is the truth and if so be acquitted. Even if the court does not believe his defence to be true must go further to ask whether it is reasonably probable and if yes he is entitle to an acquittal. A trial judge can therefore not make any findings against the accused until his defence is heard. The burden of proof and persuasion as provided in section 13 of the Evidence Act, 1975 (NRCD 323) was not applicable at the

close of the prosecution's case. The burden of proof and persuasion as provided in section 13 of the Evidence Act is applicable at the end of the case and not at the end of prosecution's case.

The trial court held in its ruling that the accused person formed a consortium and invested the money in other businesses not borne by the agreement Exhibit A, and that appropriation was dishonestly made. One wonders where the court got that piece of evidence from since it is not borne by the evidence before the court. It is interesting to note that while the trial court rightly rejected the Accused's Investigation caution statement and charged statements, as not rightfully or legally obtained, since it is an alleged confession statement but the procedures not adhered to, she however referred to the averments in those rejected statements to come to her conclusions.

The proceedings of the trial court on 26th Day of May 2021 when the investigator D/ Insp. Emmanuel Ansah Fiankoh (PW2) was giving his evidence to the court shows that Counsel for the accused raised an objection to the tendering of the accused person's Investigation Caution Statement on the grounds that the statement contains admissions to the offence the Police were investigating and charged before the court. However, there was no independent witness who witnessed the taking of the statement. That it is clearly in breach of section 120(2) and (3) of the Evidence Act, 1975 (NRCD 323). That since it is a clear breach of statute the court cannot waive it. Counsel contend further that the statement was not the true statement of the accused. That the accused was coerced to sign and then thumbprint the statement. Based on these allegations they prayed the trial court to reject the statement in its entirety.

Though Counsel for the prosecution objected to the application, the trial court upheld the accussed's objection and rejected the statement and ordered it marked as Exhibit R5

for the ICS, dated 23rd January 2017 and R6 for the charged sheet of the accused dated 3rd May 2017. The question to ask is since the Investigation Caution Statement and the Charged Statement of the Accused had been rightly rejected by the Court as Exhibits R5 and R6 upon what is the case being tried?

On the face of the record, the accused was charged based on the alleged confessions he made to police. These alleged confessions he denied as "*non est factum*" that he did not make those statements but coerced to sign and thumbprint. The court rightly rejected both statements, as not properly obtained and marked as Exhibits R5 and R6.

At that point, the court suo motu or on the application of the prosecution had the option of ordering a "mini trial" or "voir dire" to ascertain whether the procedure for obtaining confession statements had been adhered to in the case by the prosecution. Mini trials are ordered if the accused says he did not offer any statement to the investigator but was coerced, forced, promised etc. to sign one. You do not order a mini trial if the accused admits making a statement but denying the contents. That is left for cross-examination. The trial court failed to order a mini trial to ascertain the circumstances under which the accused's statements were obtained but rejected the statements as not taken in conformity with Section 120(2) and (3) of the Evidence Act meaning the court has accepted the accused's objection that the statements were not properly obtained. That doubt therefore inures to the benefit of the accused person.

At that point the Prosecution had the option of praying the court to discharge the accused for him to be re-arrested and the statements properly taken from him but they failed to do so and went on to close their case. If the admissibility of the statement of the accused is the last point left for the prosecution's case to be concluded, the court should acquit and discharge the accused should it turn out that the only evidence against him

is his statement to the police and that statement too is rejected as inadmissible: See **Republic vrs Akosah 1975 2 GLR 406.**

The court also held in its ruling that during a meeting with the accused person and the complainant, in the presence of her lawyer, the accused said he invested some of the money in Dubai and that Charles Boamah also took some of the money as well as some officials of the Royal Bank and other places. Unfortunately, the prosecution failed to call this Lawyer as a witness in the face of the rejection of the alleged confession statement by the accused person. This failure is fatal to their case.

With these failures, upon what evidence is the prosecution relying to prosecute the accused? Why will the trial court after rejecting the statements of the accused and not listening to the complainants Lawyer as a witness be using averments for those rejected statements and unproven evidence of a Lawyer who never testified to rule against the accused?

Clearly from that point, the Prosecution's case has crumbled and failed and the trial court should have acquitted and discharged the accused because the charge was based on the alleged confession in his statements and also the alleged meeting with the Complainant and the Lawyer.

Criminal charges are based on the facts and statements made by the accused person when cautioned on the charges preferred against them. In the instant appeal the alleged confession statement made by the accused upon which he was charged with the offences have both been rejected by the trial court. The Lawyer who allegedly was present in a meeting when the accused allegedly confessed to the crime was not called to corroborate the evidence of the complainant to that effect. In both situations it is unfavourable to the prosecution and fatal to their case. The trial court rejected the

statements and so erred by relying on same for its ruling and this occasioned a grave miscarriage of justice.

At that point the trial court should have upheld the submission of no case and acquit and discharge the accused, since technically there was no offence charged against him at the end of the prosecution's case. I have never come across a criminal trial where an accused stood trial without an Investigation Caution Statement nor a Charged Statement obtained from him or her. Upon what charge was he standing trial then? Failure to charge the accused before trial amounts to an improper trial.

See;- **(i) Agyiri vrs C.O.P [1963] 2 GLR 330 SC**

(ii) Rep vrs. Akosah [1975] 2 GLR 406

The trial judge erred in law when she refused to uphold the submission of no case. The court suo motu should have acquitted and discharged the accused after the end of Prosecution's case even before Counsel for the accused made the submission of no case because from that point the trial cannot continue.

This court would have recommended the transfer of the case from the trial judge to a different court if the statements were not rejected by the trial court. But with the rejection, strictly speaking there were no charges left against the accused and so must be acquitted and discharged. This court has no option but to uphold the submission of no case since there were no charges left after the rejection against the accused person.

Be it as it may, we have also taken the trouble to look at the charges as well to see if at the end of the Prosecution's case they had established all the ingredients of the charges against the accused to establish a prima facie case against him.

<u>COUNT 1</u>

Fraudulent Breach of Trust Company to Section 178 of the Criminal Offences Act 1960 (Act 29).

The facts are that the accused between September and December, 2015 did dishonestly appropriate an amount of One Million, five Hundred Thousand USD (USD1,500,000), which was vested in you as a Trustee on behalf of Abena Nyantakyi.

Section 129 defines fraudulent breach of trust. It states ***"A person commits a fraudulent breach of trust if that person dishonestly appropriates a thing the ownership of which is invested in that person as a trustee for or on behalf of my other person.***

The trial Judge listed the essential ingredients of the offence as follows:

i. *Accused must be a trustee who holds a thing on behalf of a beneficiary.*

ii. *The trustee has appropriated the thing*

iii. *The appropriation was dishonestly made.*

Trustee:

A trustee is a person who holds property in trust for another. The prime duty of a trustee is to carry out the terms of the trust and preserve safely the trust property. (Emphasis mine)

A trust involves three elements namely:-

i. *A trustee, who holds the trust property and is subject to equitable duties to deal with it for the benefit of another.*

ii. *A beneficiary to whom the trustee owes equitable duties to deal with the trust property for his benefit.*

iii. Trust property, which is held by the trustee for the beneficiary – Black's Law Dictionary, pg. 1546

From the evidence before us, thus for the investment loan note (contract) was a trust relationship created or intended to be created? Even before we find that answer, who are the parties to the agreement Exhibit 'A'? From the Exhibit the agreement was signed between MET Capital and Airport West Hotel whose MD is the complainant. Both are limited liability companies who have their legal capacity to sue and be sued. Bearing that in mind, we now find out whether that loan agreement signed by the two companies created any trust relationship or intended trust relationship between the two entities. We go to the "four corner rule". What are the terms of that agreement? What was the intention of the parties to the agreement?

MET Capital Group was the Fund Manager who is willing and able to arrange funding from a private equity investor to be disbursed to Airport West Hotel (the Borrower) pursuant to the Securities and Exchange Commission's Regulation and the Borrowers and Lenders Act 2008 (Act 773). The terms are clearly spelt out in the agreement.

Basically, from the agreement, MET Capital was the "Fund Manager" who was to arrange funding from a private equity investor to be disbursed to Airport West Hotel, termed the "Borrower".

Going through the agreement, one does not see any default clause should the Fund Manager fail to provide the fund to the Borrower. I only see default against the Borrower. The only thing I see against the Fund Manager is that "no event of default will occur if the failure to comply is capable to remedy and is remedied within 15 days of MET Capital Group giving notice to the Borrower and of the Borrower becoming aware of failure to comply."

The last paragraph of Exhibit 'A' requires the Borrower to confirm their agreement to the terms and conditions therein by signing and returning same to the Fund Manager by 2nd October, 2015. I am sure that was complied with.

From these facts, has any trust relationship been created by the parties? Has the accused in this case become a trustee to the complainant as stated in the charge against the accused? How has the accused committed a fraudulent breach of trust in the circumstance?

The first question is what is the accused holding in trust for the complainant? This was a contract entered into by two limited liability companies. Is there any evidence of clear case of fraud on the part of the accused that he intended to defraud the complainant by using his company for which the veil could be lifted? Was the money he arranged from the private investor ringfenced for the complainant?

The facts are that MET Capital, the Fund Manager, in fact arranged for the money from the private investor and the money was lodged in the MET Capital account at the Royal Bank, Accra. The complainants own evidence states that the money came and was lodged in MET Capital account at the Royal Bank. The first tranche of USD500,000 was transferred to the Borrower. However, the remainder of the USD1.5million which the Borrower was expecting was not paid to her. The conditions precedent to drawdown was a Bank Guarantee from the Royal Bank (Gh. Ltd.) to cover the principal and a personal Guarantee by the Directors, Abena Nyantakyi and other Directors to cover the interest exposure.

There is no evidence the USD2million was ringfenced for the Airport West Hotel else the contract should have indicated that the moment the money gets to the Royal Bank, they will transfer all to the Borrowers account but that was not the agreement. In the

business world, we do not think the parties intended the USD1.5million balance be left lying in the account of the MET Capital for the length of time it is to be disbursed. Those are not the specified terms of the contract. I do not see anything in the agreement that stops or prevent MET Capital from using the money. Yet, at the appointed time, MET Capital could not transfer the rest of the money to the Airport West Hotel as agreed. This is a clear breach of the agreement.

The Borrower has the right to terminate the contract based on the breach and seek any legal remedies stated in the contract specifically for such breach or general damages for breach of contract or any other civil legal remedies for example of specific performance of the contract.

Had the money not come at all, the complainant had the right to assume the accused, the CEO used the company MET Capital to defraud her but that is not the case here. In fact, the Borrower in abrogating the contract can refund strictly what was paid her and sue for damages for breach of the contract by MET Capital.

I do not see where a legal trust relationship was created here. Legally, a trustee is a third party who is authorized by a settlor to execute and manage trust assets. A trustee holds the title of the trust asset. A trustee is a requirement of an express trust along with trust property, trust intent and definite beneficiaries (emphasis mine). There is no evidence before us to suggest this was the relationship or status of the two parties in the transaction between MET Capital and Airport West Hotel.

The USD2million was not property the MET Capital was keeping in trust for the Borrower let alone the accused who is the CEO. There was no need lifting the veil in the circumstances and to charge the CEO with criminal charges in the first place.

I do not see any criminal liability here. If anything, this is a breach of contract for which the Borrower could sue for damages and specific performance. There was no legal trust relationship created between the MET and Airport West Hotel for which the charge could hold. The money in MET Capital account at the Royal Bank belongs to MET and not Airport West Hotel.

The facts state that Airport West used their property as collateral for the Bank guarantee. I think that is the reason for the judicial sympathy by the prosecution and the trial Judge. The complainant read the conditions for drawdown and decided to sign the contract as it was. It was done voluntarily and so must bear the consequences of her voluntary act. She was not coerced nor deceived into entering that agreement. I guess in the quest and haste for the loan, she overlooked the consequences of that act and signed. She dealt with her financial consultant Mr. Mbroh who should have advised her throughout this transaction. She is an adult business woman and must appreciate the consequences of her acts.

A person commits the offence of fraudulent breach of trust where a trustee of a thing dishonestly appropriates the thing which the trustee holds the legal right or the legal ownership of and it is vested in the trustee by virtue of being a trustee for or on behalf of any other person who is the beneficial or equitable owner of the thing. The trustee is only the legal owner to the thing while the beneficiary is the owner is equity except that the legal title is not in the name of the beneficiary and any decision taken on the trust property by the trustee shall be in the best interest of the beneficial owner by reason of the fiduciary relationship between the two. Contemporary Criminal Law in Ghana – **2nd Edition page 337 Dennis Dominic Adjei**.

We must note that a person who acquires a thing in that person's name for that person's own right and benefit but undertakes to apply or hold the thing as a trustee for another person does not become a trustee under the act to be committed for fraudulent breach of trust unless the owner by a written instrument constituted the said owner as trustee for another person and specifies the nature of the trust and the beneficiaries of the trust.

In the absence of a written instrument executed by the owner as appointing the said owner as a trustee and specifying the nature of the trust and the beneficiary under the said trust, the owner of the thing cannot be convicted for fraudulent breach of trust and would be considered in every respect as a gratuitous trustee – Dennis Adjei (supra) page 337.

In the instant case, the legal title or ownership of the money in issue was not vested in the accused as a trustee for and on behalf of Airport West Hotel who is the beneficial or equitable owner of the money. As said earlier, there is no trust relationship between the accused and the Airport West Hotel. This position is an overstretch of the law. The contract Exhibit 'A' was signed between MET Capital and Airport West Hotel. From the analysis, there is no trust relationship between MET Capital and Airport West Hotel let alone between Airport West Hotel and the accused personally so that charge must fail.

As earlier said, this is a contract gone bad and the complainant (Airport West Hotel) can resort to any civil legal means to enforce the contract e.g. specific performance or sue for damages for breach of contract.

I do not think the State was right in charging the accused with fraudulent breach of trust and that charge must fail. With that position, the second charge of money laundering becomes irrelevant and moot.

The accused be acquitted and discharged for the offences charged as they are not established by the facts of the case as presented by the prosecution.

SGD

SENYO DZAMEFE

(JUSTICE OF APPEAL)

SGD

I AGREE **AMMA GAISIE**

(JUSTICE OF APPEAL)

SGD

I ALSO AGREE **NOVISI ARYENE**

(JUSTICE OF APPEAL)

COUNSEL

DORA QUAYE (SSA) FOR THE REPUBLIC

THEOPHILUS DONKOR FOR PLAINTIFF/APPELLANT