CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT THE CIRUIT COURT 'B' OF GHANA HELD AT TEMA
ON TUESDAY, 20TH DECEMBER, 2022

SUIT NO. D1/13/19

THE REPUBLIC

VRS

JOHNSON KOFI NTI

AND EIGHT OTHERS

RULING

The first seven accused persons are before this court on a charge of ***conspiracy to rob and robbery, contrary to section 23(1)*** and ***149 of the Criminal Offences Act, 1960 (Act 29)***. The particulars of offence for count one is that on the 23rd day of March, 2019 at Kpone in the Tema Metropolis and within the jurisdiction of this Court, you agreed to act together with a common purpose to commit crime, namely robbery.

The particulars of offence for count two are that on the aforementioned date and place within the jurisdiction of this court, with force and to overcome the resistance of one Adam, George Attivoe and Ebenezer Ahwireng who are security and driver's mates respectively at His Majesty Haulage Company, you entered the said company and attacked the said men with cutlasses, knives and sticks and robbed the company of 61 boxes of air conditions, 2 LG flat screen television set, 1 Midea water dispenser and 1 Nasco kettle all valued at one hundred and twenty thousand, nine hundred and fifty Ghana cedis.

The 8th accused person is before this court on a charge of dishonestly receiving contrary to ***Section 146 of the Criminal Offences Act, 1960 (Act 29)***. The particulars of offence are that on the same date and place, he dishonestly received 61 boxes of air conditions, 2 LG flat screen television set, 1 Midea water dispenser and 1 Nasco kettle all valued at one hundred and twenty thousand, nine hundred and fifty Ghana cedis.

All accused persons pleaded not guilty to the charges. In the course of the trial, A5 died and prosecution thus proceeded against the remaining seven accused persons. The accused persons pleaded not guilty to all the charges and by so doing, cast upon the prosecution the duty of leading evidence to establish their guilt. A plea of not guilty serves as both a shield and a sword.

A shield for the accused persons who are presumed to be innocent until proven guilty and do not have to say anything in proof of their innocence and a sword pointed at their accusers to lead evidence to establish a prima facie case against them. It is only when prosecution has discharged their duties by leading cogent and credible evidence in proof of their case that the sword would now turn towards the accused persons; not to establish their innocence but to raise a reasonable doubt in the mind of the court.

Where prosecution fails to establish such a prima facie case, the court must acquit and discharge the accused persons.

Also, by their plead of not guilty, the accused persons had invoked the protection accorded them under ***Article 19 (2) (c) of the 1992 Constitution***. Per that provision, they are presumed innocent until proven guilty. According to the case of ***Davis v. U.S. 160 U.S 469(1895)***. "Upon that plea the accused may stand, shielded by the presumption of his innocence, until it appears that he is guilty; and his guilt cannot in the very nature of

things be regarded as proved, if the jury entertain a reasonable doubt from the evidence".

In the case of ***Gligah & Atiso v. The Republic [2010] SCGLR 870 @ 879*** the court held that *"Under article 19(2)(c) of the 1992 Constitution, everyone charged with a criminal offence was presumed innocent until the contrary is proved. In other words, whenever an accused person is arraigned before any court in any criminal trial, it is the duty of prosecution to prove the essential ingredients of the offence charged against the accused person beyond any reasonable doubt. The burden of proof is therefore on the prosecution and it is only after a prima facie case has been established by the prosecution that the accused person would be called upon to give his side of the story."*

In proof of its case, prosecution called five witnesses and tendered in evidence various exhibits.

According to PW1, he is the stores manager of His Majesty Haulage Company situated at Kpone. That around 1:00am on the 24th day of March, 2019, a security by the name of Adam Moro at the company's premises informed him that there had been a robbery at the office. That together with the company's mechanic; one Kingsley Agyei, he reported the incident to the police.

Two policemen went with him to the company's premises where they saw that a 40-footer container which contains split air conditioners, flat screen televisions, corned beef and other items had been broken into and most of the items carried away. The police interrogated the one security man and two driver's mate who were present. That one security by name Yusif Seidu who was supposed to be at post was not found. That they later returned to the police station.

Whilst at the police station, he saw A1 who is a co worker drive past with some people in his car towards Kpone township. A1 later drove back and used a road opposite the police station. He says he alerted the police and after following A1, A1 was arrested. That he then left the police station after A1's arrest.

The police later called him back to give his statement to the police and he did. That A1 led police to an uncompleted building at Kpone Kokompe where all the items were recovered.

The evidence of PW2 is that he accompanied PW1 to the police station to report the crime.

PW3's evidence is that he was on patrol duties between 6:00pm to 6:00am when he was instructed to return to the charge office to assist in a complaint of robbery. That he did so and met PW1. Together with another policeman by name General Sergeant Daniel Sah and PW1, they proceeded to the scene.

They met the security man who informed them that at about 12:00am, a group of men numbering about ten and armed with cutlasses and gun entered the premises, locked them in the security room, brought in a truck and loaded some items from the 40-footer container parked in the company's yard and left.

That they found the aid container which was broken into and unspecified items taken. A search at the compound revealed two cutlasses, one hammer, a cutter, broken padlock and an eagle bottle beer. That they returned to the police station where PW1

informed them that A1 was an employee of the company and that he had seen his vehicle moving about in a suspicious manner.

That they followed PW1 and apprehended him. A search in A1's car revealed two cutlasses, two empty eagle beer bottles (same as what was found at the scene of the crime) two kitchen knives and a pair of scissors.

PW4 is General sergeant Daniel Sah. He corroborated the evidence of PW3 and tendered in evidence the said items as retrieved at the scene of the incident and from A1's vehicle.

There being no objection, the proposed exhibits are admitted and marked as Exhibit 'A' and 'A1' series two cutlasses, Exhibit 'B' Hammer, Exhibit 'C' Metal Industrial cutter, Exhibit 'D' series three empty eagle beer bottles, Exhibit 'E' Pair of scissors, Exhibit 'F' series two kitchen knives, Exhibit 'G' one broken padlock.

PW5 is the investigator. She tendered in evidence photographs of the items supposedly stolen by the accused persons, initial statement of Adam Moro and that of Ebenezer Ahwireng. The investigation caution statement and charge caution statement of accused persons were rejected and marked as EXHIBIT R series.

Her evidence is that A1 conspired with A2, A3, A4 and A5 and told them to accompany him to His Majesty Haulage Company where he works to go and steal. That he also called A6 and A7 who are a driver and driver's mate respectively and they also agreed.

That on the day in question, all the accused persons went to the company, threatened the security man Adam Moro and two driver's mates with cutlasses and knives and

locked them in a security room. The accused person then used the industrial cutter and broke into a 40-footer container belonging to the company and loaded the items mentioned in the charge sheet into a truck.

A1 also arranged with A8 to keep the items in an uncompleted building at Kpone Konkompe where he resides and so they took the items to him and he received them. Prosecution closed its case after this.

CONSIDERATION BY THE COURT

Section 173 of the Criminal and Other Offences Procedure Code, 1960 (Act 30) provides that; "If at the close of the evidence in support of the charge, it appears to the Court that a case is not made out against the accused sufficiently to require him to make a defence, the Court shall, as to that particular charge, acquit him."

According to the Supreme Court in the case ***of Asamoah &Anor. v. The Republic [2017-2018] 1 SCGLR, 486, Adinyira JSC*** speaking for the apex court, stated that ''the underlying factor behind the principle of submission of no case to answer is that, an accused person should be relieved of the responsibility of defending himself when there is no evidence upon which he may be convicted. The grounds under which a trial court may uphold a submission of no case as enunciated in many landmark cases whether under a summary trial or trial by indictment may be restated as follows;

a) There had been no evidence to prove an essential element in the crime
b) The evidence adduced by the prosecution had been so discredited as a result of cross examination; or
c) The evidence was so manifestly unreliable that no reasonable tribunal could safely convict upon it

d) The evidence was evenly balanced in the sense that it was susceptible to two likely explanations, one consistent with guilt, one with innocence.

See the celebrated case of ***The State v. Ali Kassena [1962] 1 GLR 144 in which the Practice Direction issued by the Queens Bench Division in England [1962] 1 E.R 448 (Lord Parker CJ) was approved*** **of**

On a charge of conspiracy to rob, the prosecution must prove that the first seven accused persons agreed to act together with a common purpose to rob the said company.

In ***Commissioner of Police v. Afari and Addo [1962] 1 GLR 483***, it was held by Azu Crabbe JSC that "it is rare in conspiracy cases for there to be direct evidence of the agreement which is the gist of the crime. This usually has to be proved by evidence of subsequent acts, done in concert, and so indicating a previous agreement."

This position of the law was reiterated by the Supreme Court in the oft cited case of ***Azametsi and Others v. The Republic [1974] 1 GLR 228,*** where the Court held that "it was not always easy to prove agreement by evidence, but it could be inferred from the conduct of and statements made by the accused persons."

The reverent **Torkornoo JSC,** in reading the decision of the Supreme Court in the case of **Asiamah Vrs Republic (J3 6 of 2020) [2020] GHASC 64 (04 November 2020) held that ''The elements of conspiracy as just stated were outlined in *Republic v. Baffoe Bonnie and 6 Others (Suit No. CR/904/2017) (unreported)* *dated 12 May 2020 by Kyei Baffour JA* sitting as an additional justice of the High court in these words: 'For prosecution to be deemed to have established a prima facie case, the evidence led without more, should prove that:**

1. That there were at least two or more persons

2. That there was an agreement to act together

3. That sole purpose for the agreement to act together was for a criminal enterprise. …….As cited by the Court of Appeal, the Supreme Court, through Appau JSC, stated in the case of ***Akilu v. The Republic [2017-2018] SCGLR 444 at 451***: The double- edged definition of conspiracy arises from the undeniable fact that it is almost always difficult if not impossible, to prove previous agreement or concert in conspiracy cases. Conspiracy could therefore be inferred from the mere act of having taken part in the crime where the crime was actually committed. *Where the conspiracy charge is hinged on an alleged acting together or in concert, the prosecution is tasked with the duty to prove or establish the role each of the alleged conspirators played in accomplishing'' (emphasis mine)*

The evidence of prosecution on this charge is based solely on the fact that A1 had mentioned the other six accused persons as his accomplices. PW3 under cross examination by learned counsel for the accused persons at page 45 of the record of proceedings,

Q: As you stand there, you did not see any of those accused persons engaged in robbery in the company's premises.

A: My Lord, I did not see them but after we got 1st accused the same day at dawn, he is the one who named all of them and the part they have played. He helped police and they were arrested.

Q: So, as you stand there, you are relying on the words of 1st accused to implicate the others.

A: I am not the investigator and he can help to answer that question very well.

Q: I suggest to you firmly that you did not see any of the accused persons robbing the company in the company premises.

A: Yes, My Lord. I did not see them because I was not part but 1st accused is the one who named all of the rest.

Q: And I suggest to you further that apart from 1st accused naming the other accused persons police have not done any scientific investigation to link those other accused persons to the crime scene.

A: The investigator can answer that question when she is in. I did not investigate the case.

PW4, also under cross examination at page 54 of the record of proceedings had also answered:

Q: Do you have any scientific or forensic evidence that faintly links the accused persons to the items that you have exhibited that is Exhibit 'A' 6.

A: No, My Lord, if there is any scientific evidence by way of anything, that would be done by the investigator.

The investigator then mounted the box as PW5 and at page 103-104 of the record of proceedings, had this to say under cross examination:

Q: It is true that prior to this case, you are not privy to any communication and discussion between accused persons.

A: That is so My Lord.

Q: And it is also true that during your investigation, it did not come to your attention of any communication or discussion among the accused persons to go and steal the alleged items you have stated on charge sheet.

A: Yes, My Lord.

Q: I am therefore putting it to you that on Count one (1), accused persons are wrongly placed before this court in respect of Count one (1).

A: That is not true My Lord.

Q: I am further putting it to you that your immediate answer is an afterthought and a figment of your own imagination.

A: Not true My Lord. After the arrest of first accused person, he confessed to me that he met the other accused persons and they took decision to go and steal and rob the company that is why they were charged with that offence.

I have reproduced the testimony of the witnesses for the simple reason that it speaks for itself. Prosecution has placed the 2nd to 7th accused persons before this court based on the fact that A1 confessed to having committed the crime with them.

It is elementary that a confession statement by an accused person does not serve as evidence against other accused persons unless the statement is made in their presence and they have been given the opportunity to cross examine. See the case of ***G/L/Cpl Ekow Russell v. The Republic (2016)102 GMJ124.***

…in which Akamba JSC had this to say "In the case of ***Francis Yirenkyi vs The Republic, CRA J3/7/2015 delivered on 17th February 2016 (unreported), SC,*** I had occasion to elaborate on the evidential value of confessions made against other accused persons. This is what I stated:

"It is trite criminal law that a confession made by an accused person which is admitted in evidence is evidence against him. It is however not evidence against any other person implicated in it (See Rhodes (1954) 44 CR. App. R. 23) unless it is made in the presence of that person and he acknowledges the incriminating parts so as to make them, in effect, his own''.

The investigation caution statements of the first accused person were rejected at the trial on the basis that same had not been taken in compliance with section 120 of Act 323. Thus, the said confession statement of A1 is not even before this court. The evidence before this court is what the investigator found in her investigations.

That being the case, the evidence should sufficiently make a nexus between the accused persons and the crime. By way of conspiracy, prosecution must prove the role that each of the accused persons played in the commission of the offence so as to lead to an inference that they had agreed to act together to commit the crime. The evidence is that A1 conspired with the 2nd to 5th accused persons and told them to accompany him to commit the crime. As to what role A2 to A5 had played in the commission of the offence, prosecution failed to prove same.

With regard to A6 and A7, prosecution was able to lead evidence that they were a driver and a driver's mate respectively and it was their truck that was used in carting the goods from the company after the robbery and to A8's house. That was the evidence of the investigator. As they had denied the offence, simply making this assertion on oath was not sufficient to establish a prima facie case against them.

There was no evidence of the said truck by way of a photograph or its description, no documentary evidence to indicate that it belonged to A6 or he was the authorized

driver of the said vehicle who usually drove it and no evidence that the said truck was even seen driving around the town at about the time the offence was committed or immediately afterwards. There was also no evidence that it was the said truck that had gone to offload the products at A8's premises.

For a criminal trial, simply making an assertion on oath without further evidence is not sufficient to establish a case against accused persons. At the close of prosecution's case on count one, I find that I require further evidence to arrive at any reasonable conclusion as to the offences A1, A2, A3, A4, A5, A6 and A7 have been charged with.

In the case of ***Mali v. The State, [1965] GLR 710,*** the Supreme Court laid out a fifth ground for upholding a submission of no case where it held that ''where at the end of prosecution's case, the court requires further evidence given by prosecution, then the irresistible inference is that the prosecution has not made out a case and the accused should be acquitted''

Upon these considerations, I hereby find that prosecution has failed to establish a prima facie case against A1-A7 on count one. They are accordingly acquitted and discharged on same.

For count two, the offence of robbery is provided for in ***Section 149 of the Criminal Offences Act, 1960 (Act 29).*** It is however defined by ***Section 150*** of the same Act to be:

"**Section 150 – Definition of Robbery**

A person who steals a thing is guilty of robbery if in and for the purpose of stealing the thing, he uses any force or causes any harm to any person, or if he uses any threat or criminal assault or harm to any

person, with intent thereby to prevent or overcome the resistance of that or of other person to the stealing of the thing."

A person who steals a thing commits robbery

a) If in and for the purpose of stealing the thing, the person uses force or causes harm to any other person, or
b) If that person uses a threat or criminal assault or harm to any other person, with intent to prevent or overcome resistance of the other person to the stealing of the thing.
c) The thing stolen must be in the presence of the person threatened.

In the case ***of Behome v. The Republic [1979] GLR 112***, the court held that "one is only guilty of robbery if in stealing a thing, he used any force or caused any harm or used any threat of criminal assault with the intent thereby to prevent or overcome the resistance of his victims to the stealing of the thing''

Thus prosecution, in the circumstances of this case, in order to establish a prima facie case on count two must prove that;

1. The first seven accused persons stole 61 boxes of air conditions, 2 LG flat screen television sets, 1 Midea water dispenser and 1 Nasco kettle all valued at one hundred and twenty thousand, nine hundred and fifty Ghana cedis belonging to His Majesty Haulage company
2. That in stealing the said items, by the use of a cutlasses, knifes and sticks, they threatened criminal assault on the three men who were at post.
3. That their intention of using the threat was to prevent or overcome the resistance of the three men to the stealing of the items

Prosecution failed to call the security man and the two driver's mate who were present and who were supposedly threatened and locked up by the accused persons to testify. They rather tendered in evidence the statement of the security man as given at the police station.

The evidence against the accused persons particularly A1 is circumstantial. He is a worker of the complainant company. On the date and time in question, a number of men with cutlasses and knives had locked a security man and two driver's mate up in the security room. They then proceeded to break into and steal items from a container at the company's premises after which they left. The culprits left behind two cutlasses, one hammer, one metal industrial cutter, a broken padlock and an eagle beer bottle.

PW1 was informed immediately and made a complaint to the police. Whilst at the police station, he saw A1 drive by with some people in his car towards the town. A1 later returned and drove past the police station again. The incident happened around midnight and so A1's driving by was between the same hours.

A1 was arrested the same dawn and some implements were found in his vehicle. These included two cutlasses, two empty eagle beer bottles and a pair of scissors. The accused person then confessed to the offence and led police to the house of A8 where all the items were found and retrieved.

At page 44 of the record of proceedings, PW3 under cross examination by learned counsel for the *accused persons had answered:*

Q: So, you are telling this court you only suspected that those were the items some persons robbed the complainant with but not the accused persons in the box.

A: My Lord, some of the exhibits can be linked to 1st accused. After we got him arrested and brought him to the station, a search was made in his presence and we found cutlasses, empty beer bottles and Kitchen knives inside his car. Some of the exhibits that we found at the scene and so we highly suspect that he may be the one who or be part of those who did the operation

At page 65 of the record of proceedings, PW4 under cross examination by learned counsel for the accused persons had answered;

Q: *So, with those 4 cutlasses, can you tell the ones that were picked at the crime scene and those that were picked from the boot of the car?*

A: The big cutlass and scissors was found in the car boot.

I found PW3 and PW4 to be credible witnesses. They had corroborated each other's evidence as to the implements that were found at the scene and those that were found in A1's car. It is not lost on the court, that aside from the cutlasses, knives and scissors, the very same brand of beer that was found at the scene of crime as having been left there by the culprits, was also found in A1's car: that is eagle beer.

The circumstantial evidence all point to one inference, that A1 was part of the group of men who robbed the company of the listed items as contained in the particulars of offence on the said date. At the close of prosecution's case, I hereby find that they have established a prima facie case against A1 on the charge of robbery. He is hereby ordered to open his defence if he so desires.

I find on the evidence that prosecution has failed to produce sufficient evidence linking A2 to A7 to the offence of robbery. The circumstantial evidence does not in any way indicate what role they played in the robbery. Save for A1 naming them, there is no link between them and the crime. Just like A1 named them, he could very well have named

others. That is why the duty lies on prosecution to conduct investigations which would tie each one of them in to the crime. Counsel for the accused person in his cross examination of the witnesses had amongst others asked questions about forensic evidence. Prosecution indicated that same had been conducted but the person who conducted it was not available.

At page 105 and 106, the investigator had answered under cross examination

Q: Did you conduct forensic exam to know which of the accused person's has ever handled any of the things you have pictured.

A: My Lord, forensic expert was invited from RCID to do that My Lord.

Q: I am putting it to you that you have no such evidence before this honourable court pointing faintly that the accused persons have handled what is stated in the Exhibits of the implements.

A: My Lord, not yet. The expert who did the examination went on peacekeeping before the trial.

Q: I am putting it to you that police is an institution and it is not a private job for that expert to take the report to peacekeeping.

A: My Lord, he is the only expert we have in Tema.

Q: Is it your case that he did not hand over and he took information belonging to the state through police to wherever he went.

A: My Lord, he did not take it to peacekeeping.

Q: I put it to you that you have no such evidence before this court because it simply does not exist.

A: It does exist.

If indeed the said evidence does exist, same was not tendered in evidence before this court or even filed as part of disclosures. Such evidence particularly evidence of A2 to

A7's finger prints on any of the recovered stolen items or the implements used for the robbery would have been able to link them to the offence. As prosecution has failed to do this, A2, A3, A4, A5, A6 and A7 are acquitted and discharged on count two.

On count three, ***Section 147 (1) of Act 29*** explains the offence of dishonestly receiving as follows;

"A person is guilty of dishonestly receiving any property which he knows to have been obtained or appropriated by any crime, if he receives, buys, or in any manner assists in the disposal of such property otherwise than with a purpose to restore it to the owner''.

The relevant elements for the prosecution to establish in a case of dishonestly receiving are that;

a) A8 knew that 61 boxes of air conditions, 2 LG flat screen television set, 1 Midea water dispenser and 1 Nasco kettle all valued at one hundred and twenty thousand, nine hundred and fifty Ghana cedis which were stored in his premises by A1 were obtained or appropriated by crime and;
b) That knowing this, he proceeded to receive and store same
c) That his receiving was dishonest i.e., he did receive it for a purpose other than restoring it to the owner.

On a charge of dishonest receiving, prosecution in proving that the accused persons had knowledge of the fact that the goods were obtained by robbery must establish that at the point of receiving the items, A8 knew that they were stolen obtained through a robbery. See the dictum of ***Atta Bedu J in the case of Salifu & Another v. The Republic [1974] 2 GLR 291.***

Prosecution need not establish actual knowledge. According to the decision **in *Owusu Addo J. in the case of Santuoh v. The Republic [1976] 1 GLR 44*** "in discharging the onus of proof of knowledge, it was not necessary for the prosecution to lead evidence of actual knowledge, it was sufficient if evidence from which knowledge could be justifiably inferred was established''.

Prosecution's evidence is that the items were recovered from A8's house which is an uncompleted building. Prosecution tendered in photographs of the recovered items; none of them indicate a background of an uncompleted building. Prosecution also did not call any witness to testify that the said uncompleted premises indeed exists, that A8 lives there and the items were recovered there on the said date.

It would be a reasonable expectation that at the least, a photograph be taken of the items when they were found to indicate amongst others exactly where they were found before they were retrieved. To take a picture of the retrieved items after they had been taken to another place and present it as evidence in proof of the crime would lead to the court attaching very little evidential value to same.

It appears that prosecution has taken the relevant evidence for this trial for granted… that is that once A1 had confessed and implicated the other persons, there was no need for further evidence to be gathered concerning in particular the other accused persons in order to establish the offence against them.

That is not the position of the law with regard to evidence, particularly in proof of a criminal matter. Prosecution bears the singular duty and burden of proving to the court with cogent, positive and credible evidence, each of the relevant elements of the offence against A8. A8 did not have a duty to assist the prosecution in any manner in proving

their case against him. Thus, simply relying on a confession statement of A1 (which has even been rejected) in proof of a crime against A8, cannot be held to be sufficient evidence, warranting the court to arrive at a determination that a prima facie case has been established against A8.

In the case of ***Akilu v. The Republic [2017-2018] 1 SCGLR, 444, the SC speaking through Apau JSC*** held that "we want to lay emphasis on the principle in criminal trials that; all reasonable doubts that make the mind of the court uncertain about the guilt of the accused, are always resolved in favour of the accused. By reasonable doubt is not meant mere shadow of doubt. Where, from the totality of the evidence before a trial court, a soliloquy of ''should I convict' or 'should I acquit' takes control of the mind of the court, then a reasonable doubt has been raised about the guilt of the accused. The appropriate thing to do in such a situation, is to acquit, as required by law''.

I hereby find that prosecution has failed to establish a prima facie case against A8 on the charge and accordingly, acquit and discharge him.

(SGD)

H/H BERTHA ANIAGYEI (MS)

(CIRCUIT COURT JUDGE)

DSP JACOB ASAMANI FOR THE REPUBLIC

P.K. HODO FOR THE ACCUSED PERSONS