

**IN THE CIRCUIT COURT '10' OF GHANA, ACCRA, HELD THIS FRIDAY 14<sup>TH</sup>  
DAY OF APRIL, 2023 BEFORE HER HONOUR EVELYN E. ASAMOAH (MRS).**

**SUIT NO.D2/158/2022**

**REPUBLIC**

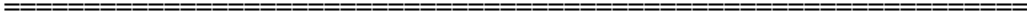
**V.**

- 1. SAMSU ABDUL**
- 2. BASHIRU YAKUBU**
- 3. KWAME ARHIN**
- 4. MICHAEL ANDAN**
- 5. JABRI IDDRISU**
- 6. ZOUBEIRU (AT LARGE)**
- 7. ENUSAH (AT LARGE)**
- 8. ZARAKU (AT LARGE)**

MR. SAMUEL K. OFORI FOR A1

MR. OSMAN BOHADIN FOR A2

MR. KWABENA SARFO-MENSAH FOR A3



**RULING**

•In this case, the CCTV footage at the warehouse of the complainant captured the incident which led to the arrest of the accused persons herein. A1, A2, A5, A6, and A7 were charged with the following offences:

- Conspiracy to commit offence to wit stealing (3 counts) contrary to sections 23(1) and 123 of the Criminal and Other Offences Act 1960- Act 29,
- Unlawful entry (3 counts) contrary to section 152 of Act 29
- Stealing contrary to section 124 of Act 29 (6 counts). A5, A6, and A7 are at large. A1 and A2 pleaded not guilty.

· A3, A1, A2, A6, A7, and A8 were charged with the offence of conspiracy to commit a crime to wit stealing contrary to sections 23(1) and 123 of Act 29. A4 was charged with the offence of abetment of crime contrary to section 20 of Act 29. A5 was charged with the offence of dishonestly receiving contrary to section 146 of Act 29. They pleaded not guilty.

•Facts are as follows: Complainant Mathias Agbo is a businessman who resides at Korle-Bu whilst 1st accused person Samsu Abdul is a trader residing at Okaishie with accomplices Bashiru, Zoubeiru, Enusah and Zaraku all now at large. On the 22nd day of February 2022, the complainant visited his warehouse at Kantamanto and realized that some goods kept in the warehouse were nowhere to be found he played back his CCTV footage mounted at the warehouse and saw some young men who opened the padlock to his warehouse with their keys and carried away three (3) bales of ladies' underwear valued GH¢14,400.00 each. The complainant who wanted to get the thieves arrested, did not change the padlock to the warehouse. So on the 3rd of March, 2022 and 12th of March, 2022 respectively, the same young men came to the warehouse and again opened the padlock with their own keys and carried away four (4) bales of ladies' underwear on the 3rd of March, 2022 and two (2) bales on the 12th of March, 2022 totaling nine (9) bales valued GH¢129,600.00. 1st accused person was identified in the CCTV footage. 1st accused person, Samsu Abdul was arrested and he admitted having stolen two (2) bales of the ladies' underwear with his accomplices carrying the other seven (7) bales of ladies' underwear. The 1st accused person failed to lead police to the place of abode of his accomplices. On 21st March 2022, the accused person led police to where he claimed he took the bale of ladies' underwear he stole but the receiver could not be traced. After investigations, the 1st accused person was charged with the offenses as contained in the charge sheet and put before this Honorable Court.

### **First and Second Accused Persons (A1 &A2)**

- In the caution statements of A1 and A2, they did not deny that they were at the premises. A2 in his caution statement (Exhibit C) – stated:

*“... I saw Jabri Iddrisu who came around to pick up some of the goods stolen to sell. I opened the padlock of the warehouse of the complainant and A1, Baba, and Zoubeiru gained access to the said warehouse for them to steal all the goods. In all, we took bales out of the warehouse of the complainant. I got the master key from on taller ...”*

- In the video footage, A1 and A2 were at the scene/warehouse. A2 had keys that he used to open the warehouse. They carried out goods from the warehouse. So far there is no evidence on record that the complainant granted them access to the warehouse.

In the case of **Uyuanwunw V. The Republic, (2010 – 2012) GLR 15**, the Court held that:

*Under section 13(1) of the Evidence Act, 1975 (NRCD 323) and article 19(2)(c) of the 1992 constitution, a criminal offence required proof beyond reasonable doubt. Consequently, the prosecution must prove all the ingredient of the offence charged and in accordance with the burden of proof, by establishing a prima facie case after which the burden of proof would be shifted to the accused person to open his defence. In the event, the accused person must give evidence that was acceptable to the court otherwise he might be convicted.*

It's the view of the court that a case is made out against A1 and A2 and they are called to open their defence.

- **The Fourth Accused Person (A4)**

The investigator in his witness statement indicated that on 26th April 2022, A2 took the police to a key cutting shop opposite the Children's Hospital and pointed out A4 as the

person who cut the master key, he used in opening the padlock to the warehouse of the complainant.

A4 was charged with abetment of crime. The particulars of the offence state:

*“Kwame Arhin, 45 years, key cutter: on or about 1st March 2022 in the Greater Accra Circuit ... did aid one Bashiru Yakubu to commit a crime to wit stealing”*

The complainant during cross-examination stated that he did not see A4 in the video footage.

- This is an excerpt of the cross-examination of the complainant by counsel for A3.

Q: You know around Katamanto, there are so many people, each doing his own business?

A: Yes.

Q: So it's not strange that someone fabricates keys?

A: It's strange to me because that has not happened to me before.

Q: A4 that is his trade and he plays his trade for money?

A: A2 said A5 gave the keys to them and he normally cut duplicate keys for them for their operations and they sometimes go for the operation and later pay his money to him.

Q: You had this information, why did you not tell the police?

A: I said A2 was the one who the police want. I never said so.

...

Q: I put it to you that A4 ply's his genuine business in the central business area and nobody contracted him to make any key?

A: I can't tell.

- Prosecution witnesses contended that A2 in his caution statement indicated that he 'got the master key from one Taller.' A2 never indicated that A4 was involved in the crime and there is no evidence that A4 gave the said key to any person to enable them to break the padlock and steal the properties of the complainant.

In the case of **Nkoah & Others V. The Republic [1997-1998] 2 GLR 746** the court ruled that:

“...the settled position of law was that an extra-judicial statement made to the Police by an accused person in which he incriminated himself and a co-accused as to the offence charged jointly against them bound only the confessor and not the non-confessing co-accused; and it did not matter that they had been charged with conspiracy”.

A4 in his caution statement (Exhibit H) indicated that A2 is not his friend and he does not ‘recall the exact date suspect Bashiru claims he came over to my shop to cut a key.’ The facts show that A4 has a shop in Kantamanto where he trades, fabrication/cutting keys. There is no evidence that he aided any of the other accused to commit any offence.

Section 173 of Act 30 states:

*“Where at the close of the evidence in support of the charge, it appears that a case is not made out against the accused sufficiently to require accused to make a defence, the court shall, as to that particular charge acquit the accused.”*

A prima facie case has not been made against A4. In the circumstance, he is hereby acquitted.

#### **The fifth accused person (A5)**

A5 was charged with the offence of dishonestly receiving. It is indicated that he dishonestly received two (2) bales of ladies' underwear valued at GH¢28,800.00 the property of the complainant which he knew to have obtained or appropriated by means of crime.

Section 146 and 147 of the Criminal and Other Offences Act, 1960- Act 29 state:

146. Dishonestly receiving property

*A person who dishonestly receives property which that person knows has been obtained or appropriated by a criminal offence punishable under this Chapter commits a criminal offence and is liable to the same punishment as if that person had committed that criminal offence.*

147. Dishonestly receiving

(1) A person commits the criminal offence of dishonestly receiving property which that person knows to have been obtained or appropriated by a criminal offence, if that person receives, buys, or assists in the disposal of the property otherwise than with a purpose to restore it to the owner.

- The facts so far presented indicate that he received bales of clothes at the cost of GH¢2,500.00 and that the market price for a bale was GH¢14,400.00.

A5 in his caution statement – Exhibit J stated:

*“I received two (2) dozens of the goods from Zoubeiru at GH¢2,000.00 each and sold them to my customer at GH¢2,500.00 each in Abidjan. The complainant in his statement quoted the price for a bale as GH¢14,400.00.”*

Thus, A5 knew that the goods he received were below the market price.

- In the case of **The State V. Sowah and Essel (1961) GLR 743**, Crabbe J.S.C (as he then was) stated:

*“It is wrong therefore to presume the guilt of an accused merely from the facts proved by the prosecution. The case for the prosecution only provides prima facie evidence from which the guilt of the accused may be presumed, and which, therefore, calls for an explanation by the accused.”*

In this case, it is the opinion of the court that there is a genuine case for trial. A prima facie case has been made against A1, A2, and A5 and they are hereby called upon to open this defence.

**(SGD)**  
**H/H EVELYN E. ASAMOAH (MRS)**  
**CIRCUIT COURT JUDGE**