

IN THE CIRCUIT COURT '10' OF GHANA, ACCRA, HELD THIS
THURSDAY 9TH DAY OF MARCH, 2023 BEFORE HER HONOUR EVELYN E.
ASAMOAH (MRS).

SUIT NO.D2/158/2022

REPUBLIC

V.

1. SAMSU ABDUL

2. BASHIRU YAKUBU

3. MICHAEL ANDAM

4. KWAME ARHIN

5. JABRI IDDRIS

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

- The third accused – A3 was charged with the offence of conspiracy to commit a crime to wit stealing contrary to sections 23(1) and 124(1) of the Criminal and Other Offences Act, 1960 – Act 29. He pleaded not guilty to the charges.

- Facts stated by the prosecution 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 value 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 offences as contained in the charge sheet and put before this Honorable Court.

•In the case of **Abdulai Fuseini V. The Republic Criminal Appeal No. J3/02/2016 6th June 2018** Supreme Court, Justice Dotse (JSC) stated:

"In criminal trials, the burden of proof against an accused person is on the prosecution. The standard of proof is proof beyond reasonable doubt.

Section 11(2) of the Evidence Act 1975 (NRCD 323) states that:

"In a criminal action, the burden of producing evidence when it is on the prosecution as to any fact which is essential to guilt requires the

prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of a fact beyond a reasonable doubt."

- The complainant during cross-examination stated that he does not know A3, did not see him in the video footage. The complainant further stated that the other accused person did not mention A3 as the person who received the stolen goods. The investigator, PW2 also corroborated the evidence of PW2. The Investigator in his testimony stated that "A2 informed the police that A3 – Michael Andam came for two (2) bales at a junction around Absa bank Kantamanto branch."

Excerpt of cross-examination of the Investigator by Counsel for A3:

Q: You agree that the witness statement that you provided does not disclose anything about A3?

A: Yes.

Q: The CCTV footage attached as Exhibit, does not have the image of A3.

A: Yes.

Q: I put it to you that the complainant does not know A3 and stated same in this court.

A: Yes.

Q: It's fair to conclude that the investigation did not attach A3 to the offence leveled against him.

A: Yes.

- The evidence reveals that A3 was not at the scene of the crime on the day of the incident. He was not captured in the CCTV footage. There is no evidence that he conspired with the other accused person to commit any offence.

In the case of **Michael Asamoah & Anor V. The Republic** Criminal Appeal No:
J3/4/2017 Date: 26th July 2017,

Justice Adinyira (Mrs.) stated:

“Permit me to preface my opinion with the dictum of Lamer CJ in the Canadian case of R v. P(MB) (1994) 1 SCR 555 on submission of no case. “Perhaps the single most important organizing principle in criminal law is the right of the accused not to be forced into assisting in his or her own prosecution. This means, in effect, that an accused is under no obligation to respond until the state has succeeded in making out prima facie against him or her... “

A prima facie case has not been made out against the A3 to require him to open his defence. In the circumstance, A3 is hereby acquitted and discharged.

(SGD)

H/H EVELYN E. ASAMOAHA (MRS)
CIRCUIT COURT JUDGE