

IN THE CIRCUIT COURT 3 HELD AT ACCRA ON MONDAY THE 25TH DAY OF JANUARY
2023 BEFORE HER HONOUR SUSANA EDUFUL (MRS.), CIRCUIT COURT JUDGE

COURT CASE NO. D2/466/2021

THE REPUBLIC

VRS

RASHEED MOHAMMED

RULING ON SUBMISSION OF NO CASE

The Accused was arraigned before this court on the charges of Diversion of Premix Fuel to an Unapproved Destination contrary to Section 28(a) of the National Premix Fuel Committee Regulations L.I 2233 of 2016 and Stealing contrary to section 124(1) of the Criminal Offences Act, 1960 (Act 29).

BRIEF FACTS: Complainant Richard Mensah is the Liaison Officer for Petroland Ghana Limited. Whilst Accused Rashid Mohammed is a driver and resident at Ashaiman. On 16/4/2021, Petroland Ghana Limited an Oil Marketing Company contracted the Accused to transport 13,500 liters of premix fuel valued at GHC60,000.00 from TOR/Tema to Ekumfi Edumafa Landing Beach in the Central Region on behalf of the National Premix Secretariat but the Accused after taking delivery of the premix fuel failed to transport same to the said destination. A report was made

to the Police by the complainant leading to the arrest of the Accused. Investigation disclosed that the Accused after taking delivery of the product at Tema Oil Refinery, contacted and met one Mark Gorni also a tanker driver at Tema Steel Works junction where he transferred the product into his fuel tanker and collected an amount of GHC5,000.00 from him. After that, both of them drove their respective vehicles to Winneba junction in the Central Region to deliver the product. Mark Gorni then proceeded towards Cape Coast direction and met one Anthony Yeboah who happens to be the former Ekumfi Edumafa Landing Beach Committee Secretary at a section of the road and both took the product to a location yet to be identified by Police. Mark Gorni and Anthony Yeboah on hearing the arrest of the Accused have gone into hiding however Anthony Yeboah through an opinion leader in Ekumfi Edumafa has returned an amount of GHC28,000.00 as part of the proceeds from the sale of the product to the Police. After investigations, the Accused was charged with the offence and put before this court.

When the plea of Accused Person was taken on August 30, 2021 he pleaded not guilty to the charge stated in count 1 and 2 of the charge sheet. At the close of prosecution's case, Counsel for Accused applied to the court to file a submission of no case to answer. Counsel for Accused filed his written submission on January 10, 2023 hence this ruling.

PW1'S EVIDENCE

PW1 was Richmond Mohammed, he lives at Weija. He is the Liaison

Officer with Petroland Ltd, an Oil Marketing Company. According to PW1 Pertoland Ltd contracted with Always HK who also engaged the services of Accused to transport premix fuel to Ekumfi Edumafa. On April 16, 2021 at about 10:00 am the Accused who is a fuel tanker driver for the vehicle with registration No GS 4592 -11 was loaded with 13,500 litres of premix fuel at Tema Oil Refinery to be discharged at Ekumfi Edumafa to the Landing Beach Communities. PW1 attached (exhibit A) the sales invoice evidencing the said quantity of premix fuel was delivered to and received by Accused. On April 17, 2021, the Accused confirmed to PW1 on phone, that he had delivered of the fuel. On April 19, 2021 PW1 was invited to appear with Accused to the Premix Secretariat and upon interrogation by one Mr. Elliot the Accused confessed that he did not deliver the premix fuel to Ekumfi Adumafa as instructed. PW1 attached exhibit B a copy of the traceability form evidencing that the said 13,500 litters of premix fuel was loaded into the truck of the Accused from Tema Oil Refinery and was duly sighed.

PW2'S EVIDENCE

PW2 was Detective Chief Inspector Andrew Asare, he is the investigator of this case. According to PW2 on April 19, 2021 a case of stealing and diversion of premix fuel was referred to him for investigation. According to PW2 he obtained statement from Richard Mensah's stated as well as other witnesses in the case. He also took the investigation Caution Statement of the Accused in which Accused admitted having taken custody of the said premix fuel scheduled to be delivered at Ekumfi Edumafa Landing Beach but failed to do so.

The Investigation and Charge

Statement of Accused were attached in evidence as exhibit C series and D respectively. PW2 further stated that value of the said premix fuel was GH¢60,000.00 however after Accused received the said fuel, Accused, contact one Mark Gorni who is also a fuel tank driver but now at large and Anthony Yeboah (the former secretary to the landing beach) also at large and made the necessary arrangement to divert the fuel received. Accused transferred the said fuel to the said Mark Gorni at Steel Works Junction Tema. Accused took an amount GH¢5,000.00 from the said Mark Gorni and drove his empty truck to Winneba Junction in the Central Region and then returned to Tema. This was intended to outwit the National Petroleum Authority tracker fixed to his vehicle. The Secretariat of the LBC who were to receive the fuel made a report to National Premix Secretariat and Accused was later arrested.

PW3'S EVIDENCE

PW3 was Mubarak Quansah Adam. He is a businessman and lives at Mankesim in the Central Region. PW1 is also the premix coordinator for Ekumfi in the Central Region. According to him on April 16, 2021 one John Arthur who is the secretary of the Edumfa Landing Beach committee informed him that the National Coordinator for Premix Fuel had confirmed to him that they had dispatched 13,500 litres of fuel to Ekumfi Edumafa and so PW1 called Accused at around 3:30pm on that day who confirmed he was around Weija Accra and on his way to Edumafa. The evening of the same day one Ofosu Gyan the National Coordinator of Premix Fuel called him that the driver did not deliver the fuel but had sold it. According to him some one he does not know brought

to him an amount of GH¢28,000.00 in the company of John Bondzi and John Arthur as the sales value of the Premix fuel and informed the National Premix Secretariat about the development.

THE STANDARD OF PROOF AND BURDEN OF PROOF

The settled position of the law as espoused in several authorities decided by the Ghanaian Courts is that at the close of prosecution's case, a prima facie case ought to have been established. **MALI V. THE STATE** [1965] GLR 710; **THE STATE V. SOWAH** [1961] 2 GLR 745; **MOSHIE V. THE REPUBLIC** [1977] 1 GLR 258; **APALOO v. THE REPUBLIC** [1975] 1 GLR 156; **ALI KASSENA V. THE STATE** [1962] 1 GLR 144 and recent cases such as **TSATSU TSIKATA V. THE REPUBLIC** [2003-2005] 2GLR 294. In the case of **MICHAEL ASAMOAH & ANOR v. THE REPUBLIC** Suit No. J3/4/17 dated 26th July, 2017, where the Supreme Court speaking per Adinyira JSC stated the law thus:

“Furthermore, the standard of proof borne by the prosecution at this stage **cannot be proof beyond a reasonable doubt**, as held in the case of **Tsatsu Tsikata v. The Republic** [2003-2004] SCGLR 1068”

From the law stated above, it is clear that even without the prompting of the Accused Persons, this Court is obliged by law to consider, at the close of Prosecution's case, whether sufficient evidence has been offered to prove every essential element in the offence charged. To determine whether or not a case has sufficiently been made by the prosecution to justify this Court to invite the Accused Persons to open their defence, it is necessary to set out the scope of burden that is cast

on the prosecution to discharge at this stage. That is to say, whether the Prosecution has been able to establish a prima facie case against the accused persons in respect of each of the offences charged.

Referencing from the ruling of the High Court in the case of **THE REPUBLIC v. EUGENE BAFFOE-BONNIE & 4ORS** Suit No. CR/904/2017 dated 23rd May, 2019, what will necessitate a discharge and an acquittal of the accused persons, at this stage is when the following are present;

1. That there has not been sufficient evidence to prove the essential elements in the offence charged.
2. That the evidence adduced by the prosecution had been so discredited as a result of cross examination that no reasonable tribunal could rely on that evidence.
3. That the evidence offered by the prosecution is so manifestly unreliable that no reasonable tribunal could safely convict upon it.
4. That the evidence is evenly balanced, that is to say, the evidence is susceptible to two likely explanations- one consistent with guilt, the other consistent with innocence.

Section 173 of ACT 30, states 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 defense, the court shall, as to that particular charge acquit him. This Court is obliged by law to consider, at the close of Prosecution's case, whether sufficient evidence has been offered to prove every essential element in the offence

charged. In this case, the duty of the Prosecution is to establish a prima facie case against the Accused Person.

Section 174(1) “At the close of the evidence in support of the charge, if it appears to the Court that a case is made out against the Accused sufficiently to require him to make a defence, the Court shall call upon him to enter his defence and shall remind him of the charge and inform him that, if he so desires, he may give evidence himself on oath or may make a statement. The Court shall then hear the Accused if he desires to be heard and any evidence he may adduce in his defence.”

Prima facie evidence was defined in the case of **Akwasi Osei Adjei & Another v. The Republic** [2012] JELR 64455 (CA) as “nothing but evidence which on its face appears authentic and can sustain conviction until rebutted by the Accused against whom it has been proffered in an explanation that raises reasonable doubts in the mind of the judge or the Court with regard to its authenticity or safety.”

In the recent case of **Michael Asamoah & Anor. v. The Republic Suit No. J3/4/17 Her Ladyship Adinyira (Mrs.) JSC** prefaced her 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: the court held:

“Perhaps the single most important organizing principle in criminal law is the right of the Accused not 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 a prima facie case against him or her.”

INGREDIENTS OF THE OFFENCE:

The charge under count 1, Diversion of Premix Fuel to unapproved Destination to contrary to **Section 28(a) of the National Premix Fuel Committee Regulations L.I 2233 of 2016.**

Section 28(a) provides “Carting of Premix Fuel to an unintended destination other than the intended destination stated in the traceability.

Section 125 of Act 29 defines stealing as follows:

“A person steals if he dishonestly appropriates a thing of which he is not the owner.”

Section 122(2) of Act 29 defines appropriation among other things to include “...any moving, taking, obtaining, carrying away or dealing with a thing with intent that some person may be deprived of the benefit of his ownership or of the benefit of his right in the thing or in its value or proceeds or any part thereof.” The intent of the person at the time of appropriation is very important.

On count one the ingredients of the offence, there must be fuel designated to a particular destination. The Accused must have been supplied with the fuel. On receipt of the fuel the accused, knowing the destination for the supply diverted it to another place not approved as the destination of the fuel.

Prosecution’s evidence is that he Accused received the fuel per exhibit A the invoice and exhibit B the traceability form. Exhibit B shows that that the fuel was the fuel arrived at LBC and the chief fisher man and the

Secretary of LBC has signed that the fuel arrived on 16 April 2021. But Prosecution is saying Accused admitted to took the fuel for another destination. However, the court upon examining exhibit C series does not find that the Accused admitted the offence in his investigation caution statement.

When PW1 was cross-examined by Counsel for the Accused the following ensued

Take a look at exhibit 'A', the said 13,500 litres per exhibit 'A' cost GHC18,630.00, is that correct?

A. Yes, that is correct.

Q. You were the very person who furnished the Accused Person with exhibit 'A'.

A. Yes.

Q. What is the unit price of the fuel in exhibit 'A'?

A. GHC1.38.

Q. Look at the delivery remarks, it was signed and stamped by the Landing Beach Committee and Ekumfi Edumafa.

A. That is the stamp of Ekumfi Edumafa but as to whether it is from the Landing Beach, I can't confirm.

Q. Have a close look at the column that says Landing Beach Edumafa, not so?

A. Yes, that is it.

Q. In the premix industry, when the column for delivery remark signed and stamped and per exhibit 'A' it means the product is delivered, not so?

A. Yes, it means it has been delivered but there are another checks done to ensure that if indeed the product has been delivered at the Landing Beach.

Q. On exhibit 'A' look at the column below the total where it is indicated that column he signed and stamped by Ekumfi Edumafa Landing Beach, is that correct?

A. Yes, please.

Q. Per exhibit 'A', the said 13,500 liters of premix fuel given to the Accused Person was received in good condition at the Landing Beach, is that correct?

A. No please.

Q. I put it to you that exhibit 'A' the sales invoice was signed and stamped by the Landing Beach Committee of Ekumfi Edumafa.

A. No, because at the delivery remarks they have to comment whether the product has been received in good condition or not.

Q. I am putting it to you that the said remark is already printed. The only need is for signature and stamp and no need for comment.

A. There is a column for customer signature and stamp and there is a column for delivery remarks, they are different. Remarks means comment.

Q. Look at exhibit 'B', it has been signed by the various stakeholders of the Ekumfi Edumafa Landing Beach Committee as well as the Accused Person, is that correct?

A. It is true but please as I said earlier, if it is them who signed it or not

I can't tell.

Q. You have not denied in your Witness Statement that the stakeholders

have not signed exhibit 'B', not so?

A. I haven't because in my Witness Statement to disprove or accept whether what they have signed is genuine or not.

Q. You have also not denied in your Witness Statement of the stakeholders of Landing Beach did not sign exhibit 'A'.

A. Yes, denied or accepted whether it is genuine or not.

Q. You are Complainant in the matter.

A. Yes.

Q. You have not lodged any complaint formally against the Accused Person in respect of exhibits 'A' and 'B'.

A. No.

Q. I put it to you that exhibit 'A' and 'B' which you have attached to your Witness Statement and relying on are genuine.

A. For the invoice, it is genuine but the stamp and signature I cannot testify whether it is genuine or not. The same applies to the other document.

Q. Look at exhibit 'B', it is signed by one John Arthur who is the Secretary to the Landing Beach of Ekumfi Edumafa, is that correct?

A. John Arthur is the Secretary of the Landing Beach Committee, as to whether he signed it I cannot tell.

Q. On exhibit 'B', there is a signature and a stamp, not so?

A. Yes there is, but as to whether it is his or not I cannot testify.

Q. Exhibit 'B' one Nana Asamoah Entri who is the Chief Fisherman has also signed and stamped exhibit 'B' by his name, not so?

A. Yes, that is the name but as to whether it is his signature or not, I can't testify.

Q. I am putting it to you that the Police in the cause of investigating this case has not established that the signature and stamps are exhibits 'A' and 'B' are forged.

Again, when PW2 was cross-examined by Counsel for the Accused the following ensued;

Q. The delivery column of exhibit 'A' was also signed and stamped by the Landing Beach Committee of Ekumfi Edumafa.

A. The document was signed but not stamped by those who were supposed to do so.

Q. Are you saying that exhibit 'A' is forged?

A. Yes.

Q. You have not established in your investigation that exhibit 'A' is forged.

A. The document is not forged but the signature is what is forged.

Q. You have not in your Witness Statement stated that the signatures on exhibit 'A' were forged?

A. No.

Q. You have never charged the Accused Person for forgery of any signature on exhibit 'A', not so?

A. That is correct.

The Prosecution has not provided any evidence to establish that even though Nana Asamoah Entri and John Arthur have signed Exhibit B as having arrived at the Ekumfi Edumafa Landing Beach it was the

signatures were not theirs. These two person who are material witnesses for prosecution were not called to authenticate their signature. Prosecution has also not provided anything to show that the persons who endorsed exhibit B did not have authority to do so and that the signatures were fraudulently procured. Prosecution has also not established that the stump embossed on exhibit B were not that of the Landing Beach Committee.

The court therefore, hold that prosecution's own evidence confirms receipt of the fuel and the prosecution has been unable to prove the burden cast on them to establish with evidence a prima facie case at this stage of prosecution on count one.

On count two, the charge of stealing, having found under count one that the Accused delivered the fuel to the Ekumfi Edumafa Landing Beach per exhibit A and B the court is unable to establish the elements of stealing from the evidence on record.

Under section 173 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30), "where 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 the accused to make a defence, the Court shall, as to that particular charge, acquit the accused."

Having applied the principles to the case before me and having regard to the evidence on record, it is my opinion that the Prosecution has not been able to establish a prima facie case against the Accused in respect of the charge of Diversion of Premix Fuel to an Unapproved Destination and Stealing.

Consequently, accused person is Acquitted and Discharged on both counts.

PROSECUTOR

DSP EVANS KESSE

LEGAL REPRESENTATION

RAMOND AFAWUBO

H/H SUSANA EDUFUL (MRS)

(CIRCUIT JUDGE)

