

**IN THE CIRCUIT COURT OF JUSTICE, SITTING AT ASHAIMAN ON
WEDNESDAY THE 17TH DAY OF MAY, 2023, BEFORE HIS HONOUR
RICHARD DELALI ANKU**

B1/84/2019

THE REPUBLIC

VRS

- 1. EUNICE ADU**
 - 2. PATRICK KODUAH**
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RULING

This case was initiated at the Madina District Court before His Worship Richard Delali Anku (as he then was). During the pendency of the trial, H/W Anku was promoted and transferred to the Ashaiman Circuit Court as Circuit Court Judge.

By a letter dated 17th June, 2021, the Honourable Chief Justice mandated His Honour Richard Delali Anku to sit as Additional District Magistrate at the Ashaiman Circuit Court to hear the said case. Before the case was transferred to the Ashaiman Circuit Court, Prosecutor had closed his case at Madina District Court and the Court established a prima facie case against both 1st and 2nd Accused persons.

The 1st Accused person filed a submission of no case at the Madina District Court which was dismissed by the trial Court. 1st Accused person filed an appeal at the High Court and the position of the District Court was upheld. 1st Accused person climbed the ladder further by appealing at the Court of Appeal and the decision of the High Court was upheld.

On 31st March, 2022, the Ashaiman Circuit Court convicted and sentenced 2nd Accused person in the same case. It is very interesting to note that His Honour Anku was transferred from the Ashaiman Circuit Court and he was replaced by His Honour Simon Gaga to handle all cases in addition to

all part heard cases left behind by His Honour Anku. This case happens to be one of the part heard cases.

However, Counsel for 1st Accused person raised a preliminary objection to the effect that this Court is not clothed with jurisdiction to hear the case. According to Counsel, the decision in the Court of Appeal said that the case should be remitted to the Madina District Court for 1st Accused person to open her defence. This Court has a contrary view to the effect that this Court convicted and sentenced the 2nd Accused person so the 1st Accused person should also open her defence in this same Court. More so, the sitting judge has taken over all cases or part heard cases, which were handled by His Honour Anku, which includes this case.

On February 20, 2023, Counsel for 1st Accused person wrote a letter to the Registrar of this Court with a copy to the Honourable Chief Justice and stated among others as follows:

“we therefore serve notice that the Accused person will only appear before the District Magistrate Court, Madina, and not the Ashaiman Circuit Court to face trial.”

In a letter dated 11th April, 2023, and addressed to the Counsel for 1st Accused person and signed by the Judicial Secretary, among others stated as follows:

“I have been directed by His Lordship, the Acting Chief Justice to inform you that you have no right to disobey the directives of His Lordship the Chief Justice on the issue of venue of the Court.”

By the content of the letter of the Honourable Chief Justice, the venue to trial the case is the Ashaiman Circuit Court.

Now, the question that we are confronted with is that, “are we to trial the case denovo or we are to adopt proceedings of the previous Court?”

The practice in our criminal courts has been to begin trials denovo. The reason behind this practice is that the new judge must have opportunity to observe the demeanor of the Accused person(s) and any witness who might have already testified before the previous Court.

It is also argued that denovo trials defeat the judicial quest for expeditious trials.

To best unravel the scenario, I refer you to the case of *The Republic vrs. Justice Osei Kofi, High Court, Accra, CC No. ST/13/15 unreported HC, Accra.*

In this case, the trial started on 26th February, 2015, before the same Court differently constituted. Before judgment could be delivered, the trial judge went on retirement. The case was then transferred to the new judge.

To prevent the case from starting denovo, the Prosecutor petitioned the Chief Justice to direct the new judge to adopt proceedings of the previous judge rather than for the case to start denovo.

The Chief Justice, through the Deputy Judicial Secretary, in a letter dated 3rd September, 2020, stated that the new presiding judge had the discretion to adopt proceedings or hear the case denovo.

The obvious implication is that although criminal legislation is silent on whether or not criminal proceedings are always to start denovo, the discretion lies with the judge before whom such a situation presents itself.

Based on the judicial advice from the Chief Justice, the trial judge adopted the proceedings instead of starting the case denovo.

SEE also the case of *The Republic vrs. Mensah Mawusi, High Court, Ho, Suit No. F14/2/19, dated 10th November, 2019.*

There is no doubt in my mind that the case before the Court can be likened to the two cases of *Osei Kofi* and *Mensah Mawusi* mentioned supra.

In the instant case, the Prosecutor has closed his case and the 2nd Accused person had already been convicted and sentenced. I therefore use my discretion and have adopted the proceedings, as in the case of *The Republic vrs. Osei Kofi.*

1st Accused person is therefore to open her defence accordingly.

(SGD) (H/H) SIMON GAGA
(CIRCUIT COURT JUDGE)

1. COUNSEL FOR 1ST ACCUSED PERSON – DIVINE KAFUI – PRESENT.
2. PROSECUTOR – C/INSPR. TENKORANG GULLIVER PRESENT.

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