

**IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON TUESDAY THE  
7<sup>TH</sup> DAY OF MARCH, 2023 BEFORE HER LADYSHIP JUSTICE ROSEMARY  
BAAH TOSU (MRS) – HIGH COURT JUDGE SITTING AS AN ADDITIONAL  
CIRCUIT COURT JUDGE**

**COURT CASE NUMBER D5/47/15**

**THE REPUBLIC**

**VS**

- 1. DERRICK KWAME MENSAH**
- 2. REV. JAMES KWAKU DELLAH-GU**
- 3. MRS CYNTHIA DELLAH-GU**

**RULING**

The first Accused person, Derrick Kwame Mensah, appears to have absconded from the jurisdiction of this Court and did not appear to stand trial. Between the three Accused persons, they were charged with three Counts of various offences namely Conspiracy to Commit Crime to wit Forgery contrary to section 23(1) & 158 of the Criminal Offences Act, 1960, Act 29, Forgery of Other Document contrary to section 158 of the Criminal Offences Act 1960 (Act 29) and Fraudulent Transaction in Land contrary to section 34(A) of the Land Registry Act 122/62.

2<sup>nd</sup> and 3<sup>rd</sup> Accused persons, husband and wife have been both charged with the offence of Conspiracy to Commit Crime to wit Forgery. 2<sup>nd</sup> and 3<sup>rd</sup> Accused persons have pleaded Not Guilty to the charge.

**THE CASE OF PROSECUTION**

According to Prosecution, the Complainant, PW1, is a business man, whilst the 1<sup>st</sup> Accused who claims to be a business man also doubled as the errand boy of the Complainant. 2<sup>nd</sup> and 3<sup>rd</sup> Accused persons are a Reverend minister and business woman respectively.

In the year 2000, Complainant, PW1, acquired 48 (forty -eight) building plots from the Kpele-We Family at Oyarifa in Accra. Sometime in the year 2008, A1 convinced PW1 that he could assist him to register the said plots of land. Based on trust, PW1 entrusted the allocation papers in respect of the plots of land to A1 to help facilitate the registration.

A1 in the process prepared a forged indenture in which he narrated that PW1 had gifted the said plots of land to him and he had by way of thanksgiving given PW1 a sheep and an amount of GHS50.

A1 further deceived PW1 that the personnel of Lands Commission had refused to sign the document until it was transferred into the joint names of PW1 and A1. As a result of ignorance and illiteracy, PW1 signed the document without noticing the forged portion.

A1 subsequently transferred the forty eight plots entirely into his name and eventually sold all the plots to 2<sup>nd</sup> and 3<sup>rd</sup> Accused persons. It was in the month of February, 2015 that PW1 upon visiting the land noticed that unknown persons had cleared it and were about to commence construction.

PW1 further chanced upon a suit which named 2<sup>nd</sup> and 3<sup>rd</sup> Accused persons as Plaintiffs suing persons who had trespassed onto the said plots of land. A1 was arrested and retrieved from him was an indenture in the name of 2<sup>nd</sup> and 3<sup>rd</sup> Accused persons. It came to light during investigations that A1 had conspired with A2 and A3 and got the said plots of land sold to them at a discounted price.

### **EVIDENCE LED BY PROSECUTION WITNESSES**

PW1 is Yaw Owusu, the complainant. His evidence is that he knows A1, who is one of his errand boys. He says he is a business man who buys and sells property. PW1 testified that in 1997, he acquired forty- eight plots of land. He was given an indenture for this transaction between Nii Adjei Okpoti Kodia, Jacob Sowah Klotia Kwame and he, PW1 for a period of 99 years.

In 2008, A1 convinced PW1 to allow him to register the forty eight plots on his behalf. A1 claimed to know the head of Lands Commission, one lawyer Paul and also showed PW1 some documents which he claims to have registered for another person. A1 refused to take any money for the registration but convinced PW1 that he would pay after registration was done.

Continuously, A1 refused to respond to PW1's calls and even stopped visiting PW1's house. However, he always claimed to be working on it when PW1 enquired about the registration.

In 2014, PW1's attention was drawn to trespass on the land and certain documents which stated that he had gifted those lands to A1 who in turn had sold them to A2 and A3.

PW1 testified that A1 forged an indenture to show that he had gifted the forty eight plots to A1 who had appreciated the gift with a live goat and GHS50.

PW1 attached exhibits A, the said forged indenture and exhibit B, hearing notice.

PW2 is Joseph Okpoti Kodia. He testified that he was a businessman and knew both A1 and PW1. He says he is a member of the Kplen We family which possesses more than 1000 acres of land at Oyarifa. He says that in 1997, his family, knowing PW1 was into buying lands for real estate development, approached PW1 with an offer to sell him some plots of land. In consideration of the said plots of land, PW1 gave the family, four cars and an unspecified amount of money. There was also an agreement for the family to have a percentage in any project done by PW1.

After the agreement was signed, PW1 used to visit the said plots of land on which he had placed caretakers with A1. Sometime in 2014, he noticed a grader working on the land, when he enquired from A1, A1 informed him that PW1 had gifted all the forty eight plots of land to him.

PW1 was surprised upon being informed, a search at the Lands Commission showed that the plots had indeed been gifted to A1 who in turn sold them to A2 and A3.

PW3 is Detective Chief Inspector Richard Duku. He testified that a case of forgery and fraudulent transaction in land was referred to him for investigation. In the course of investigating, he visited the land and noticed that a number of persons had encroached there. He took statements from A1 and A2.

According to PW3, his investigations showed that A1 forged the document given him by PW1 to make it appear to be a gift to him. His investigations also revealed that A2 and A3 abetted A1 to change the document into their names so that they could buy same, that based on this request A1 changed the documents into their names.

PW3 tendered the following documents in evidence,

- Exhibit C, statement of A1 dated 1<sup>st</sup> April, 2015
- Exhibit D, cautioned statement of A1
- Exhibit E, statement of A2 dated 2<sup>nd</sup> April, 2015
- Exhibit F, Indenture from A1 to A2& A3 dated 3/8/2012
- Exhibit G and G1: Copies of payments made by A2 to A1

- Exhibit H: Copies of Writ of Summons filed by A2 and A3
- Exhibit J: Publication in dailies
- Exhibit K: Original Indenture & Site Plan issued to PW1 by his grantor 16/11/2017
- Exhibit L: Criminal Summons

PW4 is Detective Inspector Mathias Awudi. He testified that on 23<sup>rd</sup> October, 2020, A2 and A3 were brought to him by the Baatsona Police Divisional Commander who instructed him to obtain statements on caution from them. PW4 says he did as he was directed and also admitted them to bail.

### **THE CHARGE AGAINST A2 & A3.**

Section 23(1) of Act 29 defines Conspiracy as follows

*“ Where two or more persons agree to act together with a common purpose for or in committing or abetting a criminal offence, whether with or without a previous concert or deliberation, each of them, commits a conspiracy to abet the criminal offence”.*

In the case of *Republic vs Baffoe Bonnie, (CR/ 904/ 2017)* dated 12<sup>th</sup> May, 2020, Kyei Baffour JA stated on the elements of the offence of conspiracy

1. That there must be at least two or more persons
2. That there was an agreement to act together
3. That the sole purpose for the agreement to act was for a criminal enterprise.

Section 158 of Act 29 provides on the offence of forgery as follows

*‘A person who with intent to deceive any other person forges a judicial document or an official document commits a second degree felony’*

The ingredients of the offence which Prosecution needs to prove are

- a. Accused made or altered the whole of a document or other thing subject matter of the charge or any material part thereof.
- b. Accused must have had the intent that the document or other thing or any material part of it so made or altered would be believed to be what in fact it is not
- c. Accused must have had intent to defraud or injure any person or with intent to evade the requirements of the law.

The actus reus of the charge of forgery consists in the actual act of making or altering the document with the intent to cause it to present a false quality of itself and the mens rea would be the intent to defraud, which is an intent to acquire by any unlawful means any gain which is capable of being measured in money at the expense or to the loss of another person.

The duty of Prosecution in a charge of conspiracy is to establish the link between the Accused persons and the crime committed and also to prove the accused persons contributions to achieving the purpose of the crime.

I refer to the case of *Akilu vs Republic (2017-2018) SCGLR 444 @ 451* in which Appau JSC made the following observations.

*“ 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 is 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 the crime.”*

The obvious question to ask then is what are the roles A2 and A3 played in the alleged conspiracy to forge Exhibit A and has Prosecution led sufficient evidence to make out a prima facie case against them?

I did find a number of inherent weaknesses in the case presented by Prosecution, I refer to a portion of the facts presented in the charge sheet

*“ The first accused person deceived the complainant that the personnel at the Lands Commission said that until the documents are transferred into the name of the accused person and the complainant, they cannot register. The complainant, out of*

*illiteracy and ignorance did not detect the forgery but rather signed the indenture for him"*

These facts actually go against the very charges brought against both A2 and A3 so I probed further to make sure there were no mistakes in the facts.

Cross-examination of PW1 by Counsel for Accused persons at page 20 of the record dated 14<sup>th</sup> September, 2021

*Que: You do not know who signed your signature in exhibit A, is that not so?*

*Ans: I know it is A1*

*Que: You do not know where he allegedly forged this signature, do you?*

*Ans: No I do not know*

*Que: You also do not know the persons who helped him to forge the signature in exhibit A, is that not so?*

*Ans: I only know of A1. I do not know the person.*

*Que: You have told this Court that A1 admitted that he forged your signature in exhibit A, do you still stand by this Statement*

*Ans: Yes*

*Que: He also admitted to the Police that he forged exhibit A is that not so*

*Ans: Yes*

If this is the evidence of Prosecution's main witness then I do not know why Prosecution brought a charge of conspiracy against A2 and A3.

In a charge of conspiracy, Accused persons must have agreed to act together or be found to be working together for a criminal purpose, in this case being the forgery of exhibit A. There is no need to prove that they met or where or when, what is most important is that their actions show that they worked together to commit a crime or in this specific circumstance, forge exhibit A.

I am yet to come across any such positive evidence from the evidence in chief or cross-examination of PW1, who is himself convinced that A1 did the forgery all by himself.

PW3, the investigator, also unfortunately, did not advance the case of the Prosecution.

Cross-examination of PW3 at page 29 of the record dated 19<sup>th</sup> October, 2021

*Que: You have stated that A1 per your investigations forged a document given to him by complainant can you identify the document to the Court*

*Ans: Yes it is the document tendered by PW1, exhibit A*

*.....page 30*

*Que: In your paragraph 16 of your witness statement you stated that A2 and A3 abetted A1 where did it occur?*

*Ans: I cannot tell where they had their meeting but investigation unveiled that they engineered A1 to transfer the document into their name*

*Que: What does engineer mean in this matter*

*Ans: In their quest to purchase the land from A1, they provided him resources such as money and other support to enable him transfer documents into their name while they knew the land did not belong to A1.*

*....page 31*

*Que: What exactly did A1 do for which reason A2 and A3 abetted him?*

*Ans: Complainant gave his documents to A1 to register for him at Lands Commission. A1 forged a portion of the indenture to say that Complainant had gifted the land to him and he A1 in return thanked Complainant with GHS50 and a live goat. Based on that A1 transferred the document into his name and subsequently into A2 and A3's name.*

It is clear from the evidence of both prosecution witnesses that they know for a fact that even before A1 met A2 and A3, he had already forged the said exhibit A. If those are the facts on which Prosecution charged A2 and A3, then I do not believe that they have made out a prima facie case against A2 and A3.

I also noticed that there were two charge sheets on the docket one with the charges of Conspiracy to commit crime to wit Forgery and one with Abetment of Crime to wit Forgery. A2 and A3's pleas were taken on the Conspiracy charges.

However, I noticed that the prosecution witnesses especially the investigator, PW3 kept on referring to A2 and A3 having abetted A1.

In case this Court even made a mistake and took the plea on the Conspiracy charge instead of the Abetment charge, I took the liberty to check on the charge of Abetment to see if prosecution would have been successful on that charge.

Section 20(1) of Act 29 says this of the offence of abetment

*'A person who, directly or indirectly, instigates, commands, counsels, procures, solicits, or in any other manner purposely aids, facilitates, encourages or promotes, whether by a personal act or presence or otherwise and a person who does an act for the purposes of aiding, facilitating, encouraging, or promoting the commission of a criminal offence by another person, whether known or unknown, certain or uncertain, commits the criminal offence of abetting that criminal offence, and of abetting the other person in respect of that criminal offence.'*

The Supreme Court in discussing the essentials of abetment in the case of *Commissioner of Police vs Sarpey & Nyamekye (1961) GLR 756* stated that

*'an act constituting abetment of a crime must precede it or must be done at the very time when the offence is committed. Abetment must be contemporaneous in place, time and circumstance with the commission of the offence.'*

This means that in order to be successful on the charge of abetment, the Prosecution must prove that at the time A1 was forging exhibit A or before A1 forged exhibit A, he had help from A2 and A3. Any help received from the two Accused persons after the forgery was complete would not amount to abetment because the offence had already been committed.

Evidence, led by Prosecution shows that they themselves are convinced that A1 forged exhibit A before he even met A2 and A3. Prosecution therefore would not have succeeded on a charge of abetment either.

The case of *Moshie vs The Republic (1977) 1GLR 287* held

*'The law now seems to be that in considering his duty under section 271 of the Criminal Procedure Code, 1960 (Act 30), the judge should not leave a case to the jury if he is of the opinion that*



- a. There has been no evidence to prove an essential element in the crime charged, or*
- b. The evidence adduced by the Prosecution had been so discredited as a result of cross-examination or*
- c. The evidence is so manifestly unreliable that no reasonable tribunal could safely convict upon it, or*
- d. The evidence is evenly balanced, that is to say, the evidence was susceptible to two likely explanations, one consistent with guilt, one consistent with innocence*

I find that at the close of Prosecution's case point A, B and C particularly are present. On the authority of section 173 of the Criminal and Other Offences Procedure Act, 1960, Act 30, I find that Prosecution has failed to make out a prima facie case against A2 and A3. I am therefore unable to call upon them to enter a defence.

They are accordingly acquitted

(SGD)  
H/L ROSEMARY BAAH TOSU (MRS)  
HIGH COURT JUDGE SITTING AS  
ADDITIONAL CIRCUIT COURT JUDGE

### **REPRESENTATION**

2<sup>nd</sup> and 3<sup>rd</sup> Accused persons present

DSP Patience Egyepong for Republic

William Brown for Theophilus Donkor for 2<sup>nd</sup> & 3<sup>rd</sup> Accused persons