

IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON WEDNESDAY, 16TH DAY OF NOVEMBER 2023 BEFORE HIS HONOUR KWABENA KODUA OBIRI-YEBOAH, CIRCUIT COURT JUDGE.

D2/04/19

THE REPUBLIC

VRS

BOAKYE YIADOM

KWADWO AMPEH (AT LARGE)

JUDGEMENT

Two accused persons were charged by the prosecution but only the first accused (A1) was produced before the court. A1 was the only accused who was prosecuted as prosecution indicated that A2 was at large and was never produced before the court. The charges that were preferred against the accused persons were:

1. Conspiracy to commit crime: Contrary to Sections 23 and 124(1) of the Criminal Offences Act 1960 (Act 29)
2. Attempt to commit crime: Contrary to Section 18 (1) and 124 (1) of the Criminal Offence Act, 1960 (Act 29)

The facts of the case as attached to the charge sheet per the prosecution is extensively reproduced in this judgment. The Complainant, according to the prosecution is Randy Osei Pipim, co-operate security manager of Republic Bank head office situated at Ridge, whilst the accused person Boakye Yiadom is also a Rev. Minister, at Glorious Central at Taifa Burkina, a suburb of Accra and Kwadwo Ampeh is now at large. On the 7th day of June 2018, the Republic Bank detected an unusual transfer of the sum of GHC 953, 288.50 into an account of Global Links Promotions with account number 0031764801019.

As soon as the bank detected this fraudulent transfer, they quickly blocked the account of Global Link Promotions. On the 8th of June 2018, accused person Boakye Yiadom, the owner of the said account attempted to withdraw an amount of GHC 410,000.00 and GHC 20,000.00 with two separate cheques No. 8665740031764801019 and 8665090031764801019 respectively. The accused was subsequently arrested at the Adabraka police station to assist investigation. During investigation accused confessed to the police that his brother Kwadwo Ampem now at large, requested for his account to transfer such amount into it for collection. All efforts made to trace the said Kwadwo Ampem proved abortive. After investigation, the accused was charged with the offence before this honourable court.

The 1992 Constitution of the Republic provides that an accused person is considered innocent until proven otherwise or he pleads guilty before the court. It is also trite law that in a criminal case, when an accused pleads not guilty to an offence, as done by A1 who was produced before the court, pursuant to S.11 (2) of the Evidence Act, 1975 (NRCD 323), *the burden of proof is on the prosecution*; and the **standard of proof** has to be **beyond reasonable doubt** as stated by **Section 13(1) of the Evidence Act, 1975 (NRCD 323)** and affirmed in the case **DARKO v THE REPUBLIC [1968] GLR 203**. There is no burden on the accused. See: **COP v Isaac Antwi (1961) GLR 408 @ 412**, **Nkansah v The Republic (1980) GLR 184**.

The Supreme Court in the case of Francis Yirenkyi v The Republic (2017-2020) 1 SCGLR at page 461 the Supreme Court per Dotse JSC put it this way, "The rules and principles on the burden of proof as has been laid down in several cases such as Woolmington v Director of Public Prosecution (1935) AC 462, HL; (1935) All ER 1, HL; 25 Cr App R 72, HL per Lord Sankey; COP v Isaac Antwi (1961) I GLR 408 , SC and Lutterodt v COP (1963) 2 GLR 429 per holding (3), cannot be whittled away or shifted.

Further it must be stated that the burden of proof that vests in the prosecution to establish and prove the ingredients of an offence against appellant remains through out on the

prosecution. See: **Amartey v The State (1964) GLR 256 at 295, SC; Gligah & Atiso v The Rep (2010); Dexter Johnson v The Rep. (2011) 2 SCGLR 601; and Frimpong @ Iboman v The Rep (2012) 1 SCGLR 297 at 313.**

The accused persons A1 and A2 were charged with one count of conspiracy to commit crime and A1 alone charged with one count of attempt to commit crime under **CRIMINAL OFFENCES ACT, 1960 (ACT 29)**

Therefore, the offence under count one was that A1 and A2 within the jurisdiction of the court, did agree to act together with common purpose to commit crime to wit; stealing and A2 alone under count 2, was that A2 within the jurisdiction of the court did attempt to commit crime to wit; stealing.

The law under conspiracy is provided for by section 23 of the **CRIMINAL OFFENCES ACT, 1960 (ACT 29) which reads:**

Section 23: Conspiracy

(1) 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 commit or abet the criminal offence.

The Supreme Court in the case of **Francis Yirenkyi v The Rep. (2017-2020) 1 SCGLR page 457 the Court per Dotse JSC** as he then was said, "The effect of conspiracy as defined by the Court of Appeal, is that the persons must not only agree or act but must agree to act together for common purposes". The Court went further to state, "... Under the new formulation, a person could no longer be guilty of conspiracy in the absence of any prior agreement, whereas under the old formulation a person could be guilty of conspiracy in the absence of any prior agreement". The Court then concluded that the decision by Marful-Sau, JA in the **Rep. v Abu & Others Case** and by the Korbieh, JA panel in the **Sgt**

Agyapong Case are therefore correct and should be applied. The law therefore requires the prior agreement of the accused persons that is A1 and A2.

The Law with respect to attempt to commit crime is provided for by section 18 of **CRIMINAL OFFENCES ACT, 1960 (ACT 29) which reads:**

(1) A person who attempts to commit a criminal offence shall not be acquitted on the ground that the criminal offence could not be committed according to the intent

(a) by reason of the imperfection or other condition of the means, or

(b) by reason of the circumstances under which they are used, or

(c) by reason of the circumstances affecting the person against whom, or the thing in respect of which the criminal offence is intended to be committed, or

(d) by reason of the absence of that person or thing.

(2) A person who attempts to commit a criminal offence commits a criminal offence, and except as otherwise provided in this Act, is liable to be convicted and punished as if the criminal offence has been completed.

Section 124 of the Criminal Offences Act 1960, Act 29 creates the offence and states: A person who steals commits an offence.

Section 125 defines the offence thus: "A person steals who dishonestly appropriates a thing of which that person is not the owner". It is required of the prosecution to prove these ingredients of the offence, namely:

a. The accused is not the owner of the thing.

b. The accused appropriated it.

c. The appropriation is dishonest.

See: **Ampah and Another v The Republic (1976) 1 GLR 403 @ 412, Ampah v The Republic (1977) 2 GLR 171, CA, Lucien v The Republic (1977) 1 GLR @ 351.** Therefore, in this case, the prosecution has the responsibility to prove the accused attempted to commit the offence of stealing.

The prosecution proving their case called their witnesses that is PW1 Randy Osei Pipim, PW2 Philemon Hini and PW3 Det/Chief Insp. Saviour Deffor, who gave evidence before the court. The prosecution through their witnesses tendered various documents before the court in support of their case.

The prosecution tendered in all:

Exhibit A – Global Links Promotion Account Statement, at the Complainant Bank, from 5 – 6 – 2018 to 28 – 2 - 2019

Exhibit A1 – Page 2 of Global Link Promotion Account Statement from 28 – 2 – 2019 to 22 – 8 - 2019.

Exhibit B – HFC Bank Ghana Ltd cheque dated 8/6/2018 with value of GHC 410,000.

Exhibit C – HFC Bank Ghana Ltd cheque dated 8/6/2018 with value of GHC 20,000.

Exhibit D – Caution Statement of accused dated 8/6/2018.

Exhibit E – Further Caution Statement of the accused dated 11/6/2018.

Exhibit F – Charge Statement of accused dated 26/7/2018.

Exhibit G – Digital Forensic Examination and Incident Response Report.

PW1 the complainant in his witness statement gave evidence as the Head of Operational Risk, Republic Bank Ghana Limited. He gave evidence that on the 7/6/2018, a teller complained to the Operational Risk Department that there had been series of transactions on the system which were not done by her, but the system showed that she carried out

such transactions. PW1 said he took a critical look at the transactions and established that an amount of GHC 956,000 was moved from an internal cedi account of the Bank with account number 0040163411026 in the name of HFC Unit Trust Investments account into Trade Net Investment Limited with account number 0434477601022, where the equivalent of two hundred and fifteen thousand, six hundred and eleven United States Dollars and Fifty – Four cents (US\$ 215, 611.54) was credited.

PW1 said an amount of US\$ 215, 000.00 was subsequently moved from Trade Net Investments account into Global Link Promotions Limited account which belongs to the accused person, Joseph Boakye Yiadom where the cedi equivalent of GHC 953, 288.50 was credited. PW1 said upon further investigations, it was established that the transfer into the account of Global Links Promotion Limited was unusual and so the bank took steps to block the account of Global Links Promotion Limited.

PW1 said on 8/6/2018, the accused person, Joseph Boakye Yiadom being the account owner attempted to withdraw four hundred and thirty thousand Ghana Cedis with two cheques valued GHC 410,000.00 and GHC 20,000.00 respectively. PW1 said the accused was questioned by himself and the General Manager, Finance and Strategy of the Bank regarding the source of the GHC 953, 288.50 and the accused indicated that his brother transferred the money into his account, but the said brother was not found, and the bank concluded that the accused intentionally and unlawfully wanted to withdraw funds that were not his. PW1 ended his evidence and was cross examined before the court and after which he was discharged.

The next witness of the prosecution was PW2, who gave evidence in support of the case of the prosecution. PW2 testify to the fact that on Thursday, June 07, 2018, e-Crime Bureau received a call from PW1, and the details of the call indicated that some staff of the bank were receiving spam emails with some attachments suspected to be malicious and the bank has recorded some unauthorised transactions within the banking environment.

PW2 said, a meeting was arranged, and terms of reference was agreed, to assess the situation, to identify the sources and mode of attacks and point of entry into the Bank's network, to work with the Bank to put in place immediate measures, to prevent further attacks and contain the situation among others. PW2 concluded his testimony and stated that after the investigations a final report was prepared detailing the findings and based on the available evidence, the cyber attackers used the compromised computers, to access the banking application to initiate the transfer of funds.

The last witness the prosecution called was PW3 the investigator, he testified and said in paragraph 2 of his witness statement, "On 8/6/2018, the corporate Security Manager of Republic Bank Head Office, Mr. Stephen Yirenkyi assisted by D/Sgt Lord Asiedu and G/Sgt Rolland Tetteh arrested the accused person Boakye Yiadom and handed him over to the Police and Mr. Stephen Yirenkyi reported that the accused person attempted to withdraw cash of GHC 410,000.00 and GHC 20,000.00 with two different cheques, number 866509 and 866574, from the Bank. That such funds were part of GHC 953, 288.50 which was fraudulently transferred from the bank internal accounts".

PW3 gave further evidence that investigation disclosed that on 7/6/18, officials of Republic Bank discovered that an amount of US\$215, 000.00, cedis equivalent of GHC 953, 288.50 was fraudulently transferred from HFC Unit Trust Investments accounts into Trade Net Investment Limited with account number 0434477601022 and the money was moved from Trade Net Investment Limited account into Global Links Promotion Limited which the accused is the owner.

PW3 again testified that on 8/6/18, the accused person issued two HFC Bank Ghana Limited Cheques Number 866574 and 866 509 with face values of GHC 410,000.00 and GHC 20, 000 respectively but was stopped by bank officials and the accused person arrested and handed over to the police. PW3 gave further evidence that during

investigations accused person informed police that the funds were transferred into his accounts by one David Ampeh but failed to assist the police to arrest him.

The two other witnesses of the prosecution were also cross examined by Counsel for the Accused after their testimony, before the court, and after which they were discharged. The prosecution announced the end of their case after calling all their three witnesses.

At the end of the case of the prosecution, the Counsel for the accused made application for no case to answer. The Court gave a ruling and concluded that a case has been made against the accused for him to answer. The accused then opted to open his defence from the witness box and testified for himself before the court.

The accused filed a witness statement which he relied on as his evidence in chief before the court. The accused tendered no exhibit before the court. The accused testified that he is a Reverend Minister at Glorious Central Church International at Taifa, Accra. The accused indicated that he knew of the Republic Bank, and he has operated a current account with the bank since the year 2011. Accused testified that on the 7th of June 2018, he was informed by his cousin David Ampeh that some funds he had been expecting from his business partners had been deposited into his bank account, and he believed him because he knew him to be a shipping and clearing agent, with his offices at Mile Seven.

From the accused, the cousin said that the sum of money amounted to GHC 935,288.50 and he should go over to his bank to withdraw same for him. The accused said he went to the bank the following day on the 8th of June 2018 to enquire and if possible, to withdraw a portion of the same amount. Accused said however he insisted on seeing evidence of the said transfer from his cousin to convince himself as to whether it was true that such amount was transferred into his account.

The accused said his cousin showed him the said transaction on his phone which he saw to be the funds from Trade Net Investment into his account and he was convinced that the transaction was genuine. The accused said he went to his branch of the Republic Bank, then HFC Bank and spoke with the Relationship Manager by name Andy who also confirmed that the said amount was in his account. Accused further stated that he was asked to give personal information to upgrade his account.

Accused said his cheque was endorsed by the Relationship Manager and that was the cheque he wrote in the bank with the amount GHC 410,000 but the accused said he was told that with such amount, the bank should have been given at least two days' notice and so he should go and as soon as the money is mobilised, he would be call in the evening to come for same.

Accused said further that it was only when he went to the Head Office branch to make further enquiries and to cash a second cheque of GHC 20,000.00 that he was informed to his shock and surprise that the entire transaction was fraudulent. The accused said he never knew that the transaction his cousin did was fraudulent and that he was being used as an instrument to perfect a crime by withdrawing the said money from the bank. The accused concluded that he had no guilty mind throughout the events that would prove his guilt, since he did not take part in any activity that resulted in the transfer of the funds. The accused was afterwards cross examined and after which he was discharged, and the defence announced the end of their case. The case was then adjourned for Judgment.

The Court will now analyse the totality of the evidence that is before the court and determine if the prosecution has been able to prove their case against the accused beyond reasonable doubt with respect to the defence of the accused (A1). The prosecution led evidence that the computer systems of the complainant bank were interfered with by external hackers unknown to the complainant bank. PW1 gave evidence to this as well as

the evidence of PW2 and the report (Exhibit G) he tendered. From the evidence, there was movement of funds from an internal cedis account in the name of HFC Unit Trust Investments account into Trade Net Investment Limited account where the equivalent of US\$ 215,611.54 was credited and then subsequently the cedis equivalent amount of US\$ 215,000.00, which was GHC 953,288.50, was moved from the Trade Net Investments account into Global Link Promotions account which belongs to the accused A1.

The accused A1 himself in his witness statement in paragraph 4 and 5 indicated his knowledge of the complainant Bank and said he operated a current account with the bank since 2011. The case of the prosecution is that, after the bank noticing the said unofficial authorisation of the transfers, as reported by a teller, as the transfer was unusual took steps to block the account. From the evidence before the court, this was unknown to the accused A1. Per the evidence which the accused also admits, he wrote two cheques (exhibit B and C) to withdraw the said money which has been transferred to an account he operates which he does not know off, to withdraw the money which does not belong to him, but he was not successful as the account had been blocked. The accused attempted to withdraw these monies which does not belong to him.

The two exhibits show the front and back of the two cheques with exhibit B having the amount of GHC 410,000 with the cheque number 866574 and exhibit C having the GHC 20,000 with the cheque number 866509. From the evidence and the defence of the accused he wrote the cheque with the amount of GHC 410,000 before the cheque with the amount of GHC 20,000. The accused himself said in his defence, he wrote the cheque with the amount GHC 410,000 first, the cheque number as stated is 866574 and the other cheque with the amount GHC 20,000 which was written later has the cheque number being 866509.

Looking at the numbering in a cheque book with respect to the leaflet it means the accused went 65 pages down in the cheque book to write the cheque of GHC 410,000 before later when he was not able to clear that cheque, because of the amount, he came backwards to write the GHC 20,000. I am of the opinion that the accused will only do that because he was working on a scheme to outwit the complainant bank in an attempt to take money which does not belong to him. These acts of the accused were clearly intentional to outwit the complainant bank. The accused said further that he was going to make further enquiries at the Head Office branch of the bank and to cash a second cheque of GHC 20,000 per paragraph 14 of his witness statement. But I do not think so, but rather the determination of the accused to make a withdrawal at all costs and hence making a second attempt, even if small, before the bank will be able to detect the fraudulent transaction as he was not aware the account had been blocked and the transaction reversed. Indeed, the accused per the evidence before the court was racing against time.

Looking at Exhibit A, which was the Bank Statement of the Accused A1, which was tendered by the prosecution, the accused had a closing balance of GHC 6076.29 as of 05 June 2018. On this same day, 05 June 2018, the accused made a cheque withdrawal himself of GHC 5950 with the cheque number 866567. Then on the 07 June 2018, there was the cash deposit of GHC 953,288.50, per the account statement, which was reversed on the same day 07 June 2018 by the bank, and this was when the bank had become suspicious of the said deposit cash. The Bank in the statement of account exhibit A, under descript, described it as "Reversal HFC UNIT TRUST INVESTMENT ACCOUNT, Reversal of suspicious debit from UT Investment Account". From then till the end of the statement as exhibited, there was no more transaction that was done on the account except bank charges that the bank continued to deduct.

The accused in his evidence before the court said among others that he went to the bank the next day, which was 8th June 2018, and contacted a relationship Manger called Andy

who confirmed the said amount in the account. This cannot be true as per the evidence of the prosecution, exhibit A, there was a reversal of the transfer on the 7th of June 2018 and hence on the 8th of June the said amount was not in the account.

Accused actually plan such that he will withdraw the money immediately, the said money hit that account before there will be any suspicion. That is why the accused wrote a cheque to withdraw, substantial amount of the money, which was not successful because of the amount. And the accused using a distance cheque leaflet, attempted to still withdraw GHC 20,000 which was again not successful as the bank had detected the situation. Again, from exhibit A there has not been such huge transactions by the accused and these two attempts by the accused were outliers and very suspicious, and an indication of wrongdoing being perpetuated against the bank.

The accused in his investigation caution statement to the police which was tendered in evidence, dated 08/06/2018 as the accused was arrested on the 8/06/2018, without objection stated that he has an account with the complainant bank, and he indicated the name of the account. The accused said, "On 07/06/18 at about 3:30 pm my cousin by name David Ampeh who owns Bill Davies Shipping company located at Achimota Mile 7 called to my cell phone number to tell me that his business partners and friends want to transfer money an amount of GHC 953, 000 to him but it can only be done through an HFC account. So, he knowing I have an account with the said bank requested that I should give my account numbers to him in order to facilitate the said transaction of which I did. This morning at about 9:30 am, the same cousin of my called to tell me that my account has been credited with the above stated amount."

However, this is what the accused said in his witness statement which was filed in the registry of the court and which he relied on as his evidence in chief stated:

6. On the 7th of June 2018, I was informed by my cousin David Ampeh that some funds he had been expecting from business partners had been deposited into my account.

9. I therefore went to the bank the following day on the 8th of June 2018 to enquire and if possible, to withdraw a portion of the same amount.

This evidence of the accused contradicts the statement he gave to the police when the matter was fresh in his mind as the incident had just happened, as the accused in statement to the police said that his account was credited on the 8th of June 2018 and his statement before the court, he said the account was credited on the 7th of June 2018. And his evidence per his statement to the police cannot be true as per the account statement tendered by the prosecution, the said transfer into his account was done on the 7th of June 2018 and reversed the same day and not the 8th of June he indicated in his statement to the police.

In the case of **Poku v The State (1966) GLR 262**, it was stated “A previous statement made by a witness to the police which was in distinct conflict with his evidence on oath was admissible to discredit or contradict him”.

The same principle was applied in the case of **Yaro and Another v The Republic (1979) GLR 10**, where the court stated that “A previous statement made by a witness to the police which was in distinct conflict with his evidence on oath was always admissible to discredit or contradict him and it would be presumed that the evidence on oath was false unless he gave a satisfactory explanation of the prior inconsistent statement. A witness could not avoid the effect of a prior inconsistent statement by the simple expedient of denial”. These contradictions shows that the accused has a guilty mind.

The accused in his evidence further gave other contradictions with respect to the processes leading to his arrest. The accused in his own evidence before the court and his

statement indicated that he was told he cannot withdraw the GHC 410000 immediately and he needed to give the bank about two days' notice. The accused without any reference to his said cousin decided to move to the head office of the complainant bank to now withdraw a lower amount of GHC 20,000 and that was where luck eluded him. Why the accused who claim he knows nothing about the money and he was supposed to withdraw the money for his cousin when he was told he cannot withdraw the huge amount will not rather get the purported owner of the money informed but decides to write another cheque, which he did not cash at the same branch but decide to move to the head office of the bank to cash the money. Clearly the accused was making all effort to make withdrawal on that day as he had been told that the money was in the account.

It must be noted that the accused gave further evidence to the police that he went to the Achimota Branch of the complainant bank, as well as to his main branch. The accused further stated in the statement that he informed his cousin, and between 12 pm and 3 pm he was in conversation before he was brought to the Station. Accused however could not produce the said A2 but gave his number to the police. When the accused was asked about this his cousin during the cross examination, this is what transpired:

Q4. Where is that your supposed cousin of yours where is he?

A. My Lord, I don't know his where about now.

Q5. Upon what status did he become your cousin, is it by family or mere friendship.

A. My Lord he hails from Asamankese, and I come from Begoro, so we are all Akyem and not blood relationship.

Q6. I am putting it to you that stating in your own witness statement as well as your investigation caution statement that A2 is your cousin is another falsehood being presented before the honourable court.

A. No, I am not misleading the court.

From the responses of the accused, the said Kwadwo Ampeh was not his cousin as he himself stated. The accused again does not know the where about of A2 even after all these years that the incident happened. The prosecution succeeds improving their case against the accused A1 with respect to the charge of attempt to commit stealing.

There is no evidence of any prior agreement of the accused persons as the prosecution did not lead evidence to that effect as required by law with respect to the charge of conspiracy. Therefore, from the evidence the prosecution did not proof the ingredients of the offence of conspiracy.

In the case of **Miller v Minister of Pensions (1947) All ER 372 @ 373**, Lord Denning indicated that it is needless for the prosecution to attempt to proof the guilt of the accused beyond a shadow of doubt since that standard will be impossible to attain and were the law to allow that, there will be the admission of fanciful possibilities to deflect the course of justice.

The prosecution has been able to lead evidence to prove their case before the court and the question whether the accused committed the offence, count 2, levelled against him is answered in the affirmative. The defence of the accused has been considered by the court in totality and based on the three-tier test of examining the defence of accused person. The defence is found to be unacceptable; it is not reasonably probable and considering the whole case before the court, that is the prosecution and the defence together, the prosecution has been able to satisfy the guilt of the accused beyond reasonable doubt. See **Brempong v The Republic (1995-1996) 1GLR 321 @ 350**, **Lutterodt v Commissioner of Police (1963) 2 GLR 429 @439**.

The accused is therefore found not guilty on count 1. The accused is however found guilty on count 2 and convicted accordingly.