CORAM: HER HONOUR MRS ADWOA AKYAAMAA OFOSU, CIRCUIT COURT JUDGE SITTIING AT THE CIRCUIT COURT MPRAESO, EASTERN REGION ON THE 31ST OF OCTOBER, 2023

B1/81/2023

THE REPUBLIC

V

1.ISAAC ASIAMAH

2.ASIAMAH AMPADU GEORGE

……

…….

TIME: 11: 43

ACCUSED PERSONS PRESENT

CHIEF INSPECTOR BEATRICE LARBI FOR PROSECUTION PRESENT

ACCUSED PERSONS SELF- REPRESENTED

JUDGMENT

The accused persons herein are jointly charged on count one with *conspiracy to commit crime to wit stealing* contrary to section 23 and 124 of the Criminal Offences Act, 1960 (Act

29) and two with stealing contrary to section 124 of Act 29 supra. A1 alone is charged with stealing contrary to section 124 of Act 29.They were arraigned before this court on the 31st of March, 2023 and when the charges were read to them, they pleaded not guilty to all the charges. Based on their pleas, the court set down the case for trial for the prosecution to prove their case against the accused persons.

The facts supporting the charges are that the complainants are mobile money merchants residing at Kwahu Abetifi. The 1st accused (A1) aged 60 years is a pensioner and doubles as a mobile money merchant. The 2nd accused (A2) is also a mobile money merchant and the biological son of A1 and they all reside at Abetifi. On the 27th of March, 2023 at about 1730 hours, A2 came to the police station to report that same day about 1530 hours, during one of his daily transactions, he was defrauded by an unknown persons of e-cash totaling GH₵27,000.00.

On the following day at about 1110 hours, the first complainant came to the police station, Abetifi and lodged a complaint that A1 called him and pleaded with him that A2 urgently needed e-cash to do transactions and that he should mobilise and send e-cash to A2 for him to receive physical cash. That he, together with his niece who is a witness in this case gathered e-cash totaling GH₵23,000.00 and sent to A2 but the physical cash did not come. The first complainant further added that after A2 received the above e-cash at 1130 hours, he failed to acknowledge receipt but rather put them on black list. It was upon persistent pressure on A1 that he informed the complainant that A2 had been defrauded of their money.

Same day at about 1415 hours, the second complainant also came to lodge a complaint that on the 27th of March, 2023 at about 1050 hours, A2 called and asked for e-cash of GH₵2,800.00 in exchange for physical cash but refused to pick his calls after receiving the e-cash. A1 and A2 were arrested after thorough interrogations with the District Police

Commander and they were cautioned to that effect. Investigations disclosed that A2 had the intent of relocating to Koforidua and that is the reason why A1 and A2 decided to turn a blind eye to the relationship between them to steal their money alleging that they had been defrauded of GH₵27,000.00 by mobile money fraudsters which is on the ascendency. After necessary investigations they were charged with the offence and arraigned before court.

Article 19(2)(c) of the 1992 Constitution provides that a person charged with a criminal offence is presumed innocent until he is proven guilty or has pleaded guilty. In the Supreme Court case of **Asante (No 1) v The Republic (No.1) [2017]-2020] 1 SCGLR 132 at 143,** Pwamang JSC held that:

"Our law is that when a person is charged with a criminal offence it shall be the duty of the prosecution to prove his guilt beyond reasonable doubt, meaning the prosecution has the burden to lead sufficient admissible evidence such that on an assessment of the totality of the evidence adduced in court, including that led by the accused person, the court would believe beyond a reasonable doubt that the offence has been committed and that it was the accused person who committed it. Apart from specific cases of strict liability offences, the general rule is that throughout a criminal trial the burden of proving the guilt of the accused person remains with the prosecution. Therefore, though the accused person may testify and call witnesses to explain his side of the case where at the close of the case of the prosecution a prima facie case is made against him, he is generally not required by the law to prove anything. He is only to raise a reasonable doubt in the mind of the court as to his commission of the offence and his complicity in it except where he relies on a statutory or special defence"

The term "reasonable doubt" as explained by Lord Denning in the case of **Miller vs. Minister of Pensions (1947) 2 All ER 372** is as follows;

"It needs not reach certainty but must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. The Law would fail to protect the community if it admitted fanciful positions to deflect the course of justice". See: **Adwoa Manso v. The Republic [2009] MLRG 154 CA**

Pursuant to discharging its burden, the prosecution led evidence through four witnesses namely the 1st Complainant, Jackson Okai Asante, PW1, Agnes Osei PW2, the 2nd complainant, Bernard Owusu Boateng, PW3 and the Investigator, Detective Inspector Patience Nyarko, PW4. The prosecution tendered the following exhibits through PW4.

Cautioned statement of A1	Exhibit A
Cautioned statement of A2	Exhibit A1
Charge statement of A1	Exhibit B
Charge statement of A2	Exhibit B1
Itemised bill	Exhibit C

At the close of case for the prosecution, this court differently constituted called upon the accused persons to open their defence.

The accused persons are charged with conspiracy to commit crime to wit stealing contrary to section 23 and 124 of Act 29.

Section 23 (1) of Act 29 (supra) provides that:

"Where two or more persons agree to act together with a common purpose for or 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 above is the new formulation on the law of conspiracy brought about as a result of the work of the Statute Law Revision Commissioner. Thus in the case of **Francis Yirenkyi v the Republic, Criminal Appeal No. J3/7/2015** the Supreme Court observed that under the old formulation the following ingredients of the offence had to be established to secure a conviction:

1. Prior agreement to the commission of a substantive crime, to commit or abet that crime
2. Must be found acting together in the commissioning of a crime in circumstances which show that there was a common criminal purpose
3. That there had been a previous concert even if there was evidence that there was no previous meeting to carry out the criminal conduct

In the new formulation the only ingredient that has been preserved is 'the agreement to act to commit a substantive crime, to commit or abet that crime.

The court further noted that the new formulation no doubt reinforces the view that conspiracy is an intentional conduct.

The Supreme Court further noted that the essence of the changes brought about by the work of the Statute Law Review Commissioner is that, 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.

Again in **State v Otchere [1963] 2 GLR 463** the court held that:

In order to prove conspiracy the evidence may be either direct or circumstantial but where it is sought to prove a conspiracy solely by circumstantial evidence, the evidence must be such that not

only may an inference of conspiracy be drawn from it but also that no other inference can be drawn from it.

In the instant case, even though PW1 testified that A1 called him and requested him to send e-cash to A2, cross examination of PW1 revealed that A1 called the sister of PW1 and made the request and she in turn instructed PW1 to send the money to A2 in return for physical cash. PW1 explains under cross examination that he works for his sister. PW1 further told the court that usually when A1 makes such a request they send all the money they have to him in return for physical cash. From the evidence therefore, the request that A1 made on the 27th of March 2023 from PW1's sister and by extension PW1 was not the first time A1 had made such a request and according to A1, such transactions have been going on between them for about two years. This was not challenged by the prosecution. The evidence further shows that A1 requested for GH₵5,000.00 but PW1 ended up sending GH₵23,000.00 to A2. This for me reiterates the fact that A1 and PW1 have that course of dealing and therefore even went beyond the request that A1 made by sending GH₵23,000.00 to A2 in exchange for physical cash. From the evidence therefore, it is my view that considering the relationship between A1 and PW1, A1 would not need to agree with A2 before taking monies from PW1 and there is no evidence whatsoever to support the charge of conspiracy between A1 and A2 to dishonestly appropriate monies from PW1 or PW3.

The charge of conspiracy thus fails.

As afore mentioned the accused persons are charged with stealing on count two and A2 alone is charged with stealing on count three. Both counts will be discussed together for ease of analyses.

Section 124 of Act 29 under which the accused persons are charged on counts two and three provides that:

"whoever steals commits a second degree felony"

Section 125 of Act 29 further defines stealing thus:

"A person steals who dishonestly appropriates a thing of which he is not the owner"

In Mensah v The Republic [1978] GLR at 419, it was held that the basic ingredients requiring proof in a charge of stealing were:

1. *That the person charged must not be the owner of it*
2. *That he must have appropriated it*
3. *That the appropriation must have been dishonest*

See: **Ampah v The Republic [1977] 2 GLR 171**

In the instant case, there is no dispute that the monies involved belong to PW1 and PW2 as A2 admitted receiving those monies from them and does not make any claim of right.

The Oxford Advanced Learners Dictionary also defines appropriation as: *"the act of taking something which belongs to somebody else especially without permission"*

Section 122 of Act 29 defines acts which will constitute appropriation as follows:

1) *An appropriation of a thing by a trustee means dealing with the thing by the trustee with the intent of depriving a beneficiary of the benefit of the right or interest in the thing or in its value or proceeds or a part of that thing.*
2) *an appropriation of a thing in any other case means any moving, taking obtaining, carrying away or dealing with a thing with intent that a person may be deprived of the*

benefit of the ownership of that thing or of the benefit of the right or interest in the thing or in its value or proceeds or part of that thing"

Section 120 of Act 29, also stipulates that an appropriation of a thing is dishonest,

(a) If it is made with an intent to defraud or

(b) If it is made by a person without claim of right and with a knowledge or belief that the appropriation is without the consent of a person for whom that person is a trustee or who is owner of the thing or that the appropriation would, if known to the other person, be without the consent of the other person.

According to P.K. Twumasi in his book **Criminal Law in Ghana at page 307**, the fundamental assumption underlying our law of stealing can therefore be tersely expressed in the concept that someone or another person has a proprietary right or interest in anything that is capable of being stolen. The fact that the owner is known or unknown does not make a difference and therefore any person having no claim of right or ownership or any proprietary interest, however small it may be, but who nevertheless appropriates the property, does nothing more than to deprive the owner of his property and therefore commits the felony of stealing.

The prosecution's task therefore is to adduce evidence beyond reasonable doubt that the accused persons appropriated PW1 and PW2's monies with the intent to deprive them of the benefit of those monies. In other words, that the accused dishonestly appropriated the monies sent to them by PW1 and PW2.

The evidence of the prosecution with regards to the appropriation is that the monies were sent to A2 electronically in return for physical cash however A2 did not bring them the physical cash but later alleged that he had been defrauded. The evidence shows that on

the 27th of March 2023 which is the same day that PW1 and PW2 sent the e-cash to A2, A2 lodged a complaint to the police that he had been defrauded. Strangely however, the prosecution did not conduct any or sufficient investigation into this complaint made by A2 for, if indeed A2 was defrauded of the money then the accused persons cannot be said to have appropriated same within the meaning of section 122 of Act 29 supra.

According to PW4, A2, gave nine different MTN mobile money transactions ID to the police supposedly being the transactions through which he was allegedly defrauded and she sent to the MTN Headquarters, Accra for the true identities of the recipients but no results were received from them. The prosecution was also not able to show how the accused persons appropriated the said monies by for example showing how the accused persons have used the money or benefited from it in such a manner that would show that they had the intention to deprive PW1 and PW2 from the use or benefit of their monies. It is therefore my view that the prosecution failed to establish a prima facie case against the accused persons and they ought not to have been called upon to open their defence because the burden of proof never shifted from the prosecution.

Consequently A1 is acquitted and discharged on count one and count two. A2 is also acquitted and discharged on count one, count two and count three.

H/H ADWOA AKYAAMAA OFOSU (MRS)

CIRCUIT COURT JUDGE