

IN THE CIRCUIT COURT HELD AT KIBI IN THE EASTERN REGION ON  
THURSDAY THE 19TH DAY OF OCTOBER 2023 BEFORE H/H PETER OPPONG-  
BOAHEN, ESQ CIRCUIT COURT JUDGE

CASE NO. B1/63/22

THE REPUBLIC

VRS

1. JOSHUA KPABITEY
2. BISMARCK KUMI
3. AGYIRI FREDRICK
4. KOFI ASARE
5. SAMUEL DONKOR
6. SHAIBU MUSAH

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JUDGMENT

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The chairman of the Ghana Association of Small Scale Miners Oda District is the complainant in this case. A1 is a pay loader operator resident at Akyem Kwabeng and was in charge Shantui pay loader No. GM 1875-21. A2 is a driver in charge Howo Tipper truck No. GS 8961-20. A3 is also a driver in charge Howo Tipper truck No GN 468-20. A4 is a driver in charge Howo Tipper truck No. GT 9923-20, whilst A5 is a miner resident at Osino and A6 is a tiller and a brother in law of A5. A5 and A6 have an illegal mining site at a place commonly known as Daewoo at Osino. Some association members of Ghana Association of Small Scale Miners have mining concessions at Asamang Tamfoe. About two months ago, illegal miners invaded the mining

concession of association members and started mining with excavators. Operation halt was called in and some arrests were made but the illegal miners continued to mine on the concession. After that arrest, A5 and A6 encouraged and facilitated A1 to A4 to mine gold ore on the concession of the association members. A5 and A6 encouraged A1 to A4 to mine and cart the gold ore from the concession to the illegal mining site of A5 and A6 at Daewoo. On 2//6/22, all the accused went to the same concession and continued their illegal mining activities. Police went to the site and all the accused persons and many others escaped. On 7/6/22, A5 and A6 as usual, took A1 to A4 to the concession and encouraged them to mine the gold ore and carry same to their illegal mining site at Daewoo. Whilst A1, A2, A3 and A4 together with many others were mining using the pay loader of A1 and Tipper truck numbers GS 8961-20, GN 468-20 and GT 9923-20 belonging to A2, A3 and A4 in carting the gold ore to the illegal mining site of A5 and A6. Police, together with Okyeman Land Protection Taskforce went to the concession of the association members and arrested A1 up to A4 and impounded the aforementioned tipper trucks by which time some of the gold ore was in the tipper truck of A4 but A2 and A3 had offloaded their ore at the illegal mining site and had returned to cart more. During investigations, A5 and A6 came to Divisional Police Headquarters Kibi to facilitate bail for A1 up to A4 but they were identified as those who encouraged and facilitated A1 up to A4 to carry out the illegal mining activities within the mining concession. A5 and A6 were subsequently arrested. The accused persons voluntarily gave statements to police on caution and admitted the offence. Police visited the crime scenes at Asamang Tamfoe and Daewoo Osino and took photographs. After investigation, the accused persons were charged.

It is upon these facts and allegations that the accused persons herein; Joshua Kpabitey, aged 32 years, Bismark Kumi, aged 28 years, Agyiri Fredrick aged 32 years and Kofi Asare, aged 31 years were charged with two(2) counts of Conspiracy to mine and

mining without license contrary to sections 23(1) of the Criminal offences Act, 1960 (Act 29) and 99(2)(a) of Minerals and Mining Act, 2006(Act 703) as amended by the Minerals and Mining Amendment Act 2019(Act 995)

Similarly, Samuel Donkor, aged 58 years and Shaibu Musah, aged 23 years were charged with one count of Abetment of crime to wit: Mining without licence contrary to sections 20(1) of the Criminal Offences Act 1960(Act 29) and 99(2) (a) of Minerals and Mining Act 2006(Act 703) as amended by the Minerals and Mining Amendment Act 2019(Act 995)

A1, A2, A3 and A4 all pleaded Not Guilty to both counts one (1) and two (2). A5 and A6 also pleaded Not Guilty to count three (3) and hence this trial.

It is a trite law that when Accused persons plead 'Not Guilty', everything is in issue.

Prosecution, in proof of its case, called three (3) witnesses including the investigator.

**PW2, Mohammed Amao and PW3, Richard Owuraku Amofah** testified to the effect that A1, A2, A3, and A5 conspired to mine and they did mine without licence and that A5 and A6 abetted them to mine without licence

**PW1, D/Inspector Fatawu Tanko**, the investigator in this case told the court that on 7/6/22 Mohammed Amao and Owureku Amofah and some members of Okyeman Community Mining Protection Unit arrested A1, A2, A3 and A4 with pay loader No GM 1875-21, Howo tipper truck No GT 9923-20, Howo Tipper truck No GS 8961-20 and Howo Tipper truck No GN 468-20 respectively and PW2 reported that on same day at about 10:30 am, he and PW3 visited the Mining Concession of some members of Ghana Association of Small Scale Miners at Asamang Tamfoe and saw the accused persons mining without licence and carting gold ore or gold bearing gravel to Ankase/Osino/Daewoo for washing. According to him, he took up the investigation and

together with the day patrol team visited Asamang Tamfoe. He testified he and his team rearrested A1, A2, A3 and A4 for investigation. He further said he impounded the pay loader machine and the three Howo tipper trucks belonging to the accused and later cautioned them to that effect. Testifying, the investigator said he interrogated A1 and he indicated to him that A5 took him to his gold washing site at Ankase/Osino/Daewoo and he cleared the site where the gold ore from the concession of the association members will be unloaded for washing. PW1 also said A4 also mentioned A5 as the one who engaged him to mine and cart the gold ore to Ankase/Osino/Daewoo for him with his tipper truck. It is his testimony that A2 and A3 also mentioned A6 as the one who engaged them to mine and cart the gold to Ankase/Osino/Daewoo for him with their tipper trucks and upon these revelations by A1, A2, A3 and A4, he arrested A5 and A6 for the offence of abetment of crime to wit; mining without licence. He then cautioned A5 and A6. He later photographed the scene at Asamang Tamfoe and videoed same as well as photographed the three tipper trucks and the pay loader machine. He finally said after putting the pieces of evidence together, he charged all the accused with the various offences. The investigator tendered in evidence the cautioned statements of all the accused, photographs of two crime scenes at Asamang Tamfoe and Osino/Daewoo, photograph of the pay loader and the three tipper trucks, recording of crime scene and charge statements of all the six (6) accused which were admitted in evidence without objection and same were marked as **Exhibits A, B, C, D, E, F, G-series, H-series J and K-series** respectively.

In their defence to the charges preferred against them, all the first four (4) accused persons(A1, A2, A3 and A4 denied conspiring to mine and mining without licence. A5 and A6 also denied abetting A1, A2, A3 and A4 to mine without licence.

### **ISSUE(S)**

In determining this case, the following issues were set down for trial:

- 1) Whether or not A1, A2, A3 and A4 conspired to mine without licence
- 2) Whether or not A1, A2, A3 and A4 did mine without licence
- 3) Whether or not A5 and A6 abetted A1, A2, A3 and A4 to mine without licence

#### BURDEN OF PROOF

In this trial, prosecution is enjoined by law to prove the guilt of the Accused beyond reasonable doubt as provided in the Evidence Act, 1975 (NRCD 323) sections 11 (2) and 13 (1)). Similarly, in the case of Republic v District Magistrate Grade II Osu; Ex parte Yahaya [1984-86] 2 GLR 361-365, Brobbey J (as he then was) stated as follows:

‘One of the cardinal principles of criminal law in this country is that when an accused person pleads not guilty, his conviction must be based on evidence proved beyond reasonable doubt’.

...What ‘proof beyond reasonable doubt’ means is proof of the essential ingredients of the offence charged and not mathematical proof? See *Frimpong (Alias Iboman) v the Republic [2012] 45 GMJ 1 SC*. In the case of *Oteng v The State [1966] GLR 352 at 355* the Supreme Court stated as follows:

*‘One significant respect in which our criminal law differs from civil law is that while in civil law, a plaintiff may win on a balance of probabilities; in a criminal case the prosecution cannot obtain conviction upon mere probabilities’.*

At page 355 Ollenu JSC stated further:

*'The citizen too is entitled to protection against the state and that our law is that, a person accused of a crime is presumed to be innocent until his guilt is proved beyond reasonable doubt as distinct from fanciful doubt'.*

Also, the Supreme Court has held in the case of *COP v Isaac Antwi [1961] GLR 408* that the fundamental principles underlying the rule of law are that the burden of proof remains throughout on the prosecution and the evidential burden shifts to the Accused only if at the end of the case for the prosecution an explanation of circumstances peculiarly within the knowledge of the Accused is called for. In that case, the Accused bears the evidential burden to raise the issue or defence of their existence. Thus, the Accused is merely required to raise doubt on the balance of probability. *See also section 10(3) of the Evidence Act, NRCD 323*

The burden on the prosecution to prove the guilt of the Accused is a burden to prove all the elements of the offence beyond reasonable doubt.

## **ANALYSIS**

### **ISSUE ONE (1)**

Whether or not A1, A2, A3 and A4 conspired to mine without licence

The provision in section 23(1) of the Criminal Offences Act, 1960(Act 29) states that where two or more persons agree to act together with a common purpose for or in committing or abetting a criminal offense, whether with or without a previous concert or deliberation, each of them commits a conspiracy to commit or abet the criminal offence.

In the case of *State v Otchere and Ors. [1963] 2 GLR 466*, the Court succinctly elaborated the principles of criminal conspiracy as follows:

It was necessary that the prosecution should establish not indeed that the individuals were in direct communication with each other or directly consulting each other, or directly consulting together but that they entered into an agreement with a common design. Such agreements may be made in various ways. There may be one person, to adopt the metaphor of counsel, round whom the rest revolve. There may be conspiracy of another kind... what has to be ascertained is always the same matter: is it true to say, in the words already quoted, that the acts of the accused were done in pursuance of a criminal purpose held in common between them.

It could be seen that 'conspiracy to commit an offence' in Ghana's criminal jurisprudence is wider than that of the common law in that under the Common law conspiracy will be in respect of only agreeing together to commit a crime.

Hence in the case *of R v. Meyrick [1929] 45 TLR 421* it was held that a conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act or to do lawful act by unlawful means. That is, a conspiracy, under common law, is not merely a concurrence of wills but concurrence resulting from agreement.

In the case *of State v Otchere supra*, the Court observed that the law of conspiracy as stated in the Criminal Code, 1960 (Act 29), embodies the English law of conspiracy as enunciated in judicial decisions, and which have been applied by the courts in this Country.

But the Supreme Court had stated in the case of *Commissioner of Police v. Afari and Addo [1962] 1 GLR 483-488* in holding 1 as follows:

...the law of conspiracy is contained in section 23(1) of Act 29 and is wider in scope and in content than the English law on that subject.

Thus, in Ghana conspiracy consists not only in the criminal agreement between two minds, but also in the acting together in furtherance of a common criminal objective.

Despite the fact that conspiracy under section 23(1) of the Criminal offences Act is wider in scope and content, the agreeing together or the acting together must be for a criminal purpose. The 'common criminal objective' requirement is to ensure that persons who genuinely or lawfully render legitimate and lawful services to people, and use lawful means, will not be liable for conspiracy to commit crime.

A1 testified that he is a pay loader operator who operates the machine for grading and loading and also rents pay loaders to customers. According to him, on 7/6/22 he was arrested by a taskforce who did not tell him the reason behind his arrest until they got to the police station that they said he was into illegal mining. He testified that he was not involved in any illegal mining but he was loading gravels into trucks. It is his testimony that Shaibu Musah (A6) who hired him told him he was going to use the gravel for filling on a land and that he loaded red sand with stones (clay). He further testified that there was no water, river or stream at the area where he loaded the sand. Apart from his pay loader machine and the truck there was no other machine and above all he was not involved in any mining. During cross examination prosecution tried unsuccessfully to discredit him. Excerpt of the cross examination will suffice here:

*Q. You said you were contracted by someone to go and load some truck with gravel for him, right*



*A. That is correct*

*Q. Who was that person?*

*A. Shaibu Musah (A6)*

*Q. What was he going to use the gravel for?*

*A. For filling*

*Q. What type of filling?*

*A. Filling of the land*

*Q. Is it a building foundation or a valley?*

*A. He said filling, so I can't tell*

*Q. Who were you loading the gravel into the tipper truck*

*A. I only loaded the tipper truck. I didn't know the owner*

Contrary to PW2's assertion that A1 was involved in illegal mining, his testimony and cross examination have proved him innocent, thus he did not commit the offence.

A2 testifies that he lives at Amasaman and is a tipper truck driver. According to him, on 7/6/22 he was arrested by a group of people when his tipper truck was being loaded with gravel. The gravel was for filling of land. He testified that he was not told of the reason behind his arrest and it was when they got to the police station that they told him he was involved in illegal mining but he denied the same. Testifying, he said he did not see any other machine apart from his loaded truck and the pay loader machine which loaded his truck and that there was no source of water bodies at the scene. He also said before his arrest he offloaded

sand somewhere at the request of A6 and he can confirm no other person was doing illegal mining around that area and that the area has been demarcated for residential purposes.

During cross examination, prosecution tried as much as possible to dispute A2's claim but he was unshaking. He stood his grounds and proved his assertion.

A3, in his testimony said he is also a tipper truck driver with Registration No GN 468-20 and lives at Amasaman. He testified that on 7/6/22 a group of people arrested him at Ankase but unfortunately they did not tell him his offence. According to him, it was at the police station that they told him he was involved in illegal mining but he was not doing any illegal mining. He further said gravels were being loaded into his truck when he was arrested after A6 has contracted him. The said gravels were for filling of a land, he testifies. Apart from his tipper truck and the pay loader machine he did not see any other machine and there was no mining activity going on there but constructional activities because the land has been demarcated into building plots. He finally said he was not into illegal mining.

Testifying, A4 said he is a tipper truck driver and lives at Akyem Tafo and on 7/6/22 he was arrested by a group of people without telling him the reason for his arrest. According to him, it was at the police station that they told him he was into illegal mining but he was carting smooth sand for filling after A5 has contracted him. He testified that apart from his tipper truck and the pay loader machine there were no other machines on site and that there were no mining activities going on there except construction work.

In sum, A1, A2, A3 and A4 in their respective testimonies said they were loading gravels into tipper trucks for filling lands for both A5 and A6. They were not

involved in any illegal mining as prosecution sought to portray. It is their case that they were hired by both A5 and A6 to load gravels into their tipper trucks.

From the forgoing, it cannot be said that A1, A2, A3 and A4 were all acting together, if any at all; it was not for the purpose of or with any intention of committing a criminal offense. They were in lawful business as they were loading gravels into trucks for filling of lands for A5 and A6 after both of them have contracted them. The meeting of the minds or act is not intended for any criminal objective which was common among A1, A2, A3 and A4.

Based on this, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused persons are acquitted and discharged on Count 1 being conspiracy to commit crime to wit: mining without licence contrary to sections 23(1) of the Criminal Offences Act, 1960 (Act 29) and section 99(2) (a) of Minerals and Mining Act 2006(Act 703) as amended by Minerals and Mining (Amendment) Act, 2019(Act 995)

## **ISSUE 2**

On Count 2, the issue to be resolved is whether or not A1, A2, A3 and A4 did mine without licence

The provision in section 99(2) (a) of the Minerals and Mining Act 2006(Act 703) as amended by the Minerals and Mining Amendment Act 2019(Act 995) states:

‘A person who without a licence granted by the Minister, undertakes a mining operation contrary to this Act, commits an offence and is liable on summary conviction to a fine of not less than ten thousand penalty units and not more than fifteen thousand penalty units and to a term of imprisonment of not less than fifteen years and not more than twenty-five years.’

In order for the prosecution to prove this count from section 99(2) of the Act, it must demonstrate, in applying the ratio in the case of *KWABENA AMANING @ TAGOR V THE REPUBLIC*[2009] 23 MLRG 78, CA 129 to this case that

- 1) That the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused were mining
- 2) That they were mining without licence from the minister
- 3) That they were either instigating, commanding, counseling, procuring, soliciting, aiding, facilitating, encouraging or promoting any acts in contravention of the Act
- 4) They had contracted a non-Ghanaian to providing mining services

All the four accused persons in their respective testimonies and in their cautioned statements denied involving in any mining as prosecution claims. A cursory look at **Exhibit B** (cautioned statement of A2) will attest to same. A2 stated as follows:

*'I am a professional driver resident at Amasaman, Accra. My boss, one Boamah has a tipper truck. About six weeks ago, Mr. Boamah brought his tipper truck to Ankase to work. About two weeks ago, I was with Mr Boamah at Ankase where he gave me his tipper truck to carry sand from Daewoo site to a nearby site at the same Daewoo. My boss was with me in the truck. After that I went back to Accra. On Monday 6/6/22, I returned to Ankase to help my boss. On Tuesday 7/6/22 suspect Shaibu Musah hired my boss tipper truck to carry gravel from Ankase to Osino behind Daewoo. I carried the sand with my truck twice from the site to Daewoo. On my third trip, I was arrested by the taskforce. My tipper truck No GS 8961-20 was impounded for investigation. At the police station suspect Shaibu who contracted me to cart the gravel to Daewoo came around and I pointed him out to police and he was also arrested for investigation. I voluntarily gave statement to the police.'*

Even though PW2 testified that some months ago he and other members of the Ghana Association of Small Scale Miners went to Asamang Tamfoe and saw illegal miners with tipper trucks loading the gold ore from the concession and conveying same to Ankase and Osino where they wash and extract the gold. However, under cross examination, he said he did not see the accused washing and extracting gold at the site. It must be emphasized that PW2 is the complainant in this case and it was based on his statement (complaint) that accused were charged with both counts.

PW2, under cross examination, gave the following answers:

*Q. In respect of paragraph 6 of your witness statement, did you see accused washing and extracting gold at the site?*

*A. No*

*Q. So I put it to you that none of the accused was washing and extracting gold at the site*

*A. In respect of that site I didn't see any accused.*

He also admitted under cross examination that before this case he did not know the accused and he did not see them washing at the site but he only accused them because he went and saw them scooping the gravel from their concession. However accused challenged him through their counsel.

It needs be said that PW2 testified he made a research and found out that there is gold in the land and that he has supplied that evidence to the police. On the contrary, this assertion was unsubstantiated as the investigator never tendered any evidence to that effect.

It is the case of 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused persons that the land PW2 is claiming ownership belongs to GNAT which has permitted the townsfolk of Ankase and its

environs for their building constructions and as a result A5 and A6 contracted them (A1-A4) who are drivers of pay loader and trucks to go and scoop sand for their construction. It is on the foundation of this that when PW2 went to the site he saw sand but not any of them washing or extracting gold. PW2 honestly admitted that when he went to the site he saw some people washing but not the accused. However when counsel for the accused suggested to him since he did not see any of the accused on site washing or extracting gold then his allegation that they were mining was false, he said they were the ones. This assertion by PW2 can only be an afterthought because he admitted he did not see them on site washing or extracting gold but he still accused them of engaging in illegal mining.

As already stated, to secure conviction, under section 99(2), it is necessary for the prosecution to prove beyond reasonable doubt that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused persons were mining, they were mining without licence from the Minister, that they were either instigating , commanding, counseling, procuring, soliciting, aiding, facilitating, encouraging or promoting any acts in contravention of the Act and that they had contracted a non-Ghanaian to providing mining services

From the totality of the evidence viz-a-viz the laws and the discussions above, the accused have raised doubts as to the claim that they were engaged in illegal mining. Consequently, I hold that the Accused persons are therefore acquitted and discharged on count 2.

### **ISSUE 3**

Whether or not A5 and A6 abetted A1, A2, A3 and A4 to mine without licence

It is to be noted that A5 and A6 were charged with one count of Abetment of crime to wit: Mining without licence contrary to sections 20(1) of the Criminal Offences Act

1960(Act 29) and 99(2) (a) of Minerals and Mining Act 2006(Act 703) as amended by the Minerals and Mining Amendment Act 2019(Act 995)

The provision in section 20(1) of the Criminal Offences Act, 1960(Act 29) states that:  
'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 any other 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'. In the case of ***Boateng v The State [1964] GLR 1027*** it was held that *the offence of an abetment of a crime, as defined in section 20(1) of Act 29 may only be committed if the act or omission of another party which is purposely aided, facilitated, encouraged or promoted itself constitutes a crime.*

The essentials of abetment were discussed by the Supreme Court in the case of ***Commissioner of Police v Sarpey and Nyamekye [1961] GLR 756 @ 758*** thus:

*In order to convict a person of aiding and abetting it is incumbent on the prosecution to prove that the accused did any one of the acts mentioned in subsection (1) of section 20 of Act 29.*

*These facts/elements are:*

- a) Instigation
- b) Commands
- c) Counseling
- d) Procuring
- e) Aiding
- f) Facilitation
- g) Encouraging

*Under subsection (2) a person who abets a crime shall be guilty if the crime is actually committed*

*(a) in pursuance of abetment, that is to say, before the commission and in the presence or absence of the abettor and*

*(b) during the continuance of the abetment, that is to say, the abetment must be contemporaneous in place, time and circumstance with the commission of the offence. In our view, an act constituting an abetment in law must precede or it must be done at the very time when the offence is committed.*

The above ratio provides that the requirement of section 20(1) must be proved, that is, the abettor shall intentionally aid or facilitate or encourage or promote the commission of the offence.

It is the case of prosecution that A5 abetted A1-A4 to mine without licence. According to the investigator (PW1) he arrested A5 when he came to secure bail for one of the accused and that he charged him based on the information received from A4 and PW2. Thus he stated in paragraph 16 of his witness statement that A4 Kofi Asare mentioned A5, Samuel Donkor as the one who engaged him to mine and cart the gold ore to Ankase/Osino/Daewoo for him. This piece of evidence is pursuant to Exhibit D (Cautioned statement of A4) which prosecution relied heavily on in prosecuting A5. It is, however, to be noted that there is no mention of any gold ore in **Exhibit D** which the investigator sought to suggest. A4 only mentioned gravel A5 asked him to offload.

PW1 also testified that besides **Exhibit D**, he relied on the witness statement of PW2 and the cautioned statement of A6 in prosecuting A5. Contrary to the cautioned statement of A6, he mentioned A4's name that he went to the police station to facilitate bail for. A5's name did not appear in his cautioned statement at all. The investigator did not do a diligent work as far as prosecuting A5 is concerned. He was full of inconsistencies. Perhaps he was rushing to haul accused to court without a scintilla of evidence.



A5, in his evidence in chief stated that he has not engaged in any illegal mining and that he does not have any mining site around the mortuary road at Ankase. According to him, he went to the police station to secure bail for someone and he was arrested. PW2, who testified he saw A5 exiting the mining site could not substantiate his allegation. As a matter of fact he did not see A5 engage in illegal mining; he only assumed that having seen him exiting the mining site he has been there to engage in illegal mining.

It is further the prosecution's case that A6 abetted A1, A2, A3 and 4 to mine without licence. PW2 and PW3 never mentioned A6's name in their respective testimonies as having abetted A1-A4 to mine without licence. It was only PW1, the investigator who relied on the information given to him by A1-A3 to arrest, caution and charge A6 with the offence of abetment of crime to wit: mining without licence.

A6 in his evidence in chief and in his cautioned statement denied this claim. According to him, when he heard A1-A5 have been arrested he went with her sister to the police station to facilitate bail for them and he was arrested. In his cautioned statement **(Exhibit F)** he said as follows:

*'....I am a tiller resident at Ankase. On 7/6/22 about 7;00 am my sister Fati Musah who is the wife of suspect Samuel Donkor asked me to take a pay loader to Asamang for the pay loader to load tipper truck sand so that the trucks will offload same on her building plot at Osino. I took suspect Joshua Kpabitey, the pay loader operator to where they dig the sand and also hired suspect Kumi Bismark's tipper truck and that of Fredrick Agyire. I took the two tipper trucks to where they load the sand and the two tipper truck drivers took two trips of sand each to my sister's plot at Osino. Samuel Donkor, the husband of my sister also took Kofi Asare and he also took sand to my sister's plot at Osino twice. The sand we took to my sister's plot at Osino is meant for filling room. It is not meant for mining. My sister has documents on that land to prove ownership of the land. There is a building on that land and the sand is meant for filling six(6) rooms in that building. I was not doing mining. The sand too is not for mining purposes.*

'The cautioned statement was taken on 8/6/22 a day after A1-A4 were arrested and the incident was still fresh in his mind. So for prosecution to charge A6 for abetment of crime to wit: mining without licence beats my imagination because PW2 who is the complainant in this case never mentioned A6's name for having committed the said offence. When even the investigator interrogated A1-A3 they told him he engaged them to load sand to his sister's building plot for filling.

It is apposite to state that both A5 and A6 engaged A1-A4 to load gravels into trucks for filling and this act does not constitute mining.

There is no evidence on record to support that both A5 and A6 instigated, commanded, facilitated, and aided etc. A1-A4 to mine without licence. See the Supreme Court case of *Commissioner of Police v Sarpey and Nyamekye(supra)*

In sum I am not convinced by the evidence adduced by prosecution as it has failed to prove the requirement of section 20(1), that is, the abettor shall intentionally aid or facilitate or encourage or promote the commission of the offence.

For the foregoing reasons A5 and A6 are acquitted and discharged on count three (3).

The pay loader machine with Registration No GM 1875-21 belonging to A1, Howo tipper truck No GT 9923-20 belonging to A2, Howo tipper truck No GS 8961-20 which belongs to A3 and Howo tipper truck No GN 468-20 which also belongs to A4 should be released to them forthwith.

**H/H PETER OPPONG-  
BOAHEN ESQ**

**CIRCUIT COURT JUDGE**

**19/10/23**

**REPRESENTATION**

**D/INSPR KAMAL SALIFU GUMAH FOR PROSECUTION**

**BABA JAMAL M.A. COUNSEL FOR THE 1<sup>ST</sup>, 2<sup>ND</sup>, 3<sup>RD</sup> AND 4<sup>TH</sup> ACCUSED**

**BERNARD BEDIAKO BAIDOO HOLDING THE BRIEF OF SULEMAN MUSAH  
FOR THE 5<sup>TH</sup> ACCUSED PERSON**

**ALEX GYAMFI COUNSEL FOR THE 6<sup>TH</sup> ACCUSED PERSON**