IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA- A.D. 2021

CORAM: APPAU, JSC (PRESIDING)

DORDZIE (MRS.), JSC

LOVELACE-JOHNSON (MS.), JSC

TORKORNOO (MRS.), JSC

AMADU, JSC

CRIMINAL APPEAL

No. J3/05/2020

17TH MARCH, 2021

THE REPUBLIC …...… RESPONDENT/APPELLANT

VS.

1. ERNEST THOMPSON ….. 1ST ACCUSED /APPELLANT// RESPONDENT
2. JOHN HAGAN MENSAH ….. 2ND ACCUSED/INTERESTED PARTY
3. JULIET HASSANA KRAMER ..… 3RD ACCUSED/INTERESTED PARTY
4. CALEB KWAKU AFAGLO ….. 4TH ACCUSED
5. PETER HAYIBOR ….. 5TH ACCUSED

JUDGMENT

AMADU JSC: -

(1) The key question for determination in this appeal is whether the offences for which the Respondent was arraigned before the High Court, satisfy the constitutional requirements of Article 19(2)(d) of the 1992 Constitution, and the relevant law related to the preferring of charges against accused persons. In the exercise of this Court's appellate jurisdiction which has been invoked in the instant proceedings by the Prosecution, the Court has to determine which of the two lower courts had properly applied the constitutional provisions just referred to, as well as the relevant law, to the facts on record.

(2) The appeal record discloses that, whereas the Learned Trial Judge found and held contrary to the contention of the Respondent that the offences for which he was arraigned before the High Court, as set out in the charge sheet, satisfied the necessary details and/or particulars required by the constitutional provisions of Article 19(2)(d) of the Constitution and the relevant law and accordingly well laid, the majority of the Learned Justices of the Court of Appeal held otherwise.

(3) In other words, while the Trial High Court is of the view that the offences set out in the Charge Sheet and in respect of which the Respondent was arraigned before the High Court, contain the necessary details and/or particulars in order for the

Respondent to appreciate the nature and consequences of the offences for which he was charged, the majority of the Learned Justices of the Court of Appeal held to the contrary.

(4) This appeal therefore arises out of the majority decision of the Court of Appeal dated 3rd April 2020. Following the delivery of the decision aforesaid, the Appellant herein which shall hereafter conveniently be referred to as ***"the Prosecution",*** filed an appeal on 9th April 2020 against the judgment of the Court of Appeal in its expression of dissatisfaction with the said judgment.

(5) The notice of appeal contains five main grounds of appeal formulated and set out as follows:-

"(a) That the Court of Appeal erred when it refused to follow its own previous decision affirmed by the Supreme Court, which is binding on the Court.

(b) The Court of Appeal erred when it held that the Prosecution has failed to provide sufficient details, as required by Section 112 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) in the particulars of the charges against the Appellant/ Respondent.

(c) The Court misconstrued the import and purport of article 19(2)(d) of the 1992 Constitution and Section 112 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30).

(d) The Court erred when it held that the prosecution must provide evidence of the basic facts to be adduced at the trial in the particulars of the charge sheet.

(e) The Court erred when it held that the particulars of the charges

against the Appellant/Respondent as laid in the charge sheet are the same as the statements of offence.

(6) In my view, to the extent that one of the grounds of appeal requires the Court to determine the "***import and purport of article 19(2)(d) of the 1992 Constitution***" in relation to ***"Section 112 of the Criminal and Other Offences (Procedure) Act,1960 (Act 30)",*** as stated in the third ground of the prosecution's appeal, the interpretation jurisdiction of the court has been invoked in this appeal for the determination of the true meaning and effect of article 19(2)(d) of the 1992 Constitution.

(7) There can be no doubt that the determination of the true and proper meaning and effect of article 19(2)(d) of the 1992 Constitution in relation Section 112 of Act 30 will illuminate the path towards the determination some of the other grounds of appeal, such as the second and fifth grounds of appeal, which question the majority decision of the Court of Appeal on the grounds that the prosecution failed to provide sufficient details in the particulars of the charges against the Respondent. Further that, the particulars of the charges against the Respondent as laid in the charge sheet are the same as contained in the statements of offence. This judgment will therefore focus mainly on the third ground of the appeal while the rest of the grounds of appeal, become determined *mutatis mutandis*.

BACKGROUND

(8) The facts relating to the instant appeal are that, the Respondent together with four other persons were arraigned before the High Court Accra on 24th July 2018 on 29

counts of various offences. All accused persons together with the Respondent pleaded not guilty to the various charges preferred against them. Thereafter, by an application filed on 15th January 2019, the Respondent prayed the trial High Court for an order to compel the prosecution to provide details of the *actus reus* in terms of the acts and/or omissions the Respondent is directly responsible for, which will provide the basis for the charges preferred against him as set out in the charge sheet.

(9) I take notice that the Respondent's prayer to the trial High Court to compel the prosecution to provide details of the acts and/or omissions on the basis of which the Respondent is being prosecuted for the offences set out in the charge sheet was raised by some of the other accused persons. The ruling of the trial High Court against which the Respondent successfully appealed to the Court of Appeal bears this out.

(10) The Respondent's case for an order to compel the prosecution to provide details of the acts and/or omissions which form the *actus reus* of the offences in respect of which he is facing prosecution in the High Court is contained in an affidavit in support of his application in the trial High Court.

(11) In that application, the Respondent deposed *inter alia* that he was entitled to be informed in detail of the nature of the acts and/or omissions which provide the basis for the offences in respect of which he has been charged, and for which has been arraigned before the trial High Court. The Respondent submitted to the

trial High Court that his demand for the details is justified by the provisions of Article 19(2)(d) of the 1992 Constitution.

(12) In contesting the said application, the prosecution argued that it had complied with its constitutional obligation in terms of Article 19(2)(d) of the Constitution and contended further that a reading of the charges preferred against the Respondent will reveal that the prosecution had provided the necessary information required for the Respondent to adequately put up a defence to the charges preferred against him.

(13) To ensure a full appreciation of the issues raised by the rival contentions of the parties to this appeal, I deem it pertinent to reproduce in *extenso* the charges preferred against the Respondent. These are set out in counts 1 to 18, 20 and 22 of the charge sheet. The offences in these counts are the offences of conspiracy to cause and causing financial loss to the Republic and contravention of the Public Procurement Act 2003 (Act 663). They are as follows: -

*"**Count One***

Statement of Offence

Conspiracy to commit crime namely, Wilfully Causing Financial Loss to the State contrary to Sections 23(1) and 179A (a) of the Criminal Offences Act, 1960 (Act 29).

Particulars of Offence

1) Ernest Thompson, 2) John Hagan Mensah, 3) Juliet Hassana Kramer between September 2013 and January 2014 in Accra in the Greater-Accra Region agreed to act together with a common purpose to wilfully cause financial loss to the State.

Count Two

Statement of Offence

Wilfully Causing Financial Loss to the State contrary to Section 179(A)(3)(a) of the Criminal Offences Act, 1960 (Act 29).

Particulars of Offence

1) Ernest Thompson, 2) John Hagan Mensah, 3) Juliet Hassana Kramer between September 2013 and January 2014 in Accra in the Greater-Accra Region, wilfully caused financial loss of $28,500.00 to the State.

Count Three

Statement of Offence

Conspiracy to commit crime namely, Wilfully Causing Financial Loss to the State contrary to Sections 23(1) and 179A (3)(a) of the Criminal Offences Act, 1960 (Act 29).

Particulars of Offence

1)Ernest Thompson, 2) John Hagan Mensah, 3) Juliet Hassana Kramer between July 2013 and February 2014 in Accra in the Greater-Accra Region agreed to act together with a common purpose to wilfully cause financial loss to the State.

Count Four

Statement of Offence

Wilfully Causing Financial Loss to the State contrary to Section of 179A (3)(a) of the Criminal Offences Act, 1960 (Act 29).

Particulars of Offence

1)Ernest Thompson, 2) John Hagan Mensah, 3) Juliet Hassana Kramer between July 2013 and February 2014 in Accra in the Greater-Accra Region, wilfully caused financial loss of $2,292,048.23 to the State.

Count Five

Statement of Offence

Conspiracy to commit crime namely, Wilfully Causing Financial Loss to the State contrary to Sections 23(1) and 179A (3)(a) of the Criminal Offences Act, 1960 (Act 29).

Particulars of Offence

1) Ernest Thompson, 2) John Hagan Mensah, 3) Juliet Hassana Kramer between October 2013 and April 2014 in Accra in the Greater-Accra Region agreed to act together with a common purpose to wilfully cause financial loss to the State.

Count Six

Statement of Offence

Wilfully Causing Financial Loss to the State contrary to Section 179A (3)(a) of the Criminal Offences Act, 1960 (Act 29).

Particulars of Offence

1)Ernest Thompson, 2) John Hagan Mensah, 3) Juliet Hassana Kramer between October 2013 and April 2014 in Accra in the Greater-Accra Region, wilfully caused financial loss of $1,079,344.00 to the State.

Count Seven

Statement of Offence

Conspiracy to commit crime namely, Wilfully Causing Financial Loss to the State contrary to Sections 23(1) and 179A (3)(a) of the Criminal Offences Act, 1960 (Act 29).

Particulars of Offence

1)Ernest Thompson, 2) John Hagan Mensah, 3) Juliet Hassana Kramer between January 2014 and April 2014 in Accra in the Greater-Accra Region agreed to act together with a common purpose to wilfully cause financial loss to the State.

Count Eight

Statement Of Offence

Wilfully Causing Financial Loss to the State contrary to section 179A (3)(a) of the Criminal Offences Act, 1960 (Act 29).

Particulars of Offence

1) Ernest Thompson, 2) John Hagan Mensah, 3) Juliet Hassana Kramer between January 2014 and April 2014 in Accra in the Greater-Accra Region, Wilfully caused financial loss of S12,469.80 to the State.

Count Nine

Statement of Offence

Conspiracy to commit crime namely, Wilfully Causing Financial Loss to the State contrary to Sections 23(1) and 179A (3)(a) of the Criminal Offences Act, 1960 (Act 29).

Particulars of Offence

1)Ernest Thompson , 2) John Hagan Mensah, 3) Juliet Hassana Kramer between June 2014 and January 2015 in Accra in the Greater-Accra Region agreed to act together with a common purpose to wilfully cause financial loss to the State.

Count Ten

Statement of Offence

Wilfully Causing Financial Loss to the State contrary to Section 179A (3)(a) of the Criminal Offences Act 1960 (Act 29).

Particulars of Offence

1) Ernest Thompson, 2) John Hagan Mensah, 3) Juliet Hassana Kramer between June 2014 and January 2015 in Accra in the Greater-Accra Region, wilfully caused financial loss of $100,895.70 to the State.

Count Eleven

Statement of Offence

Conspiracy to commit crime namely, Wilfully Causing Financial Loss to the State contrary Sections 23(1) and 179A (3)(a) of the Criminal Offences Act, 1960 (Act 29).

Particulars of Offence

1) Ernest Thompson, 2) John Hagan Mensah, 3) Juliet Hassana Kramer between January 2015 and March 2015 in Accra in the Greater-Accra Region agreed to act together with a common purpose to wilfully cause financial loss to the State.

Count Twelve

Statement of Offence

Wilfully Causing Financial Loss to the State contrary to Section 179A (3)(a) of the Criminal Offences Act, 1960 (Act 29).

Particulars of Offence

1) Ernest Thompson, 2) John Hagan Mensah, 3) Juliet Hassana Kramer between January 2015 and March 2015 in Accra in the Greater-Accra Region, wilfully caused financial loss of $180,000.00 to the State.

Count Thirteen

Statement of Offence

Conspiracy to commit crime namely, Wilfully Causing Financial Loss to the State contrary to Sections 23(1) and 179A (3)(a) of the Criminal Offences Act, 1960 (Act 29).

Particulars of Offence

1) Ernest Thompson, 2) John Hagan Mensah, 3) Juliet Hassana Kramer, 4) Caleb Kwaku Afaglo between December 2015 and April 2016 in Accra in the Greater-Accra Region agreed to act together with a common purpose to wilfully cause financial loss to the State.

Count Fourteen

Statement of Offence

Wilfully Causing Financial Loss to the State contrary to Section 179A (3)(a) of the Criminal Offences Act, 1960 (Act 29).

Particulars of Offence

1)Ernest Thompson, 2) John Hagan Mensah, 3) Juliet Hassana Kramer, 4) Caleb Kwaku Afaglo between December 2015 and April 2016 in Accra in the Greater-Accra Region, willfully caused financial loss of $5,465,909.14 to the State.

Count Fifteen

Statement of Offence

Conspiracy to commit crime namely, Wilfully Causing Financial Loss to the State contrary to Sections 23(1) and 179A (3)(a) of the Criminal Offences Act, 1960 (Act 29).

Particulars of Offence

1) Ernest Thompson, 2) John Hagan Mensah, 3) Juliet Hassana Kramer between August 2015 and September 2015 in Accra in the Greater-Accra Region agreed to act together with a common purpose to wilfully cause financial loss to the State.

Count Sixteen

Statement of Offence

Wilfully Causing Financial Loss to the State contrary to section 179A (3)(a) of the Criminal Offences Act, 1960 (Act 29).

Particulars of Offence

Ernest Thompson 2) John Hagan Mensah 3) Juliet Hassana Kramer between August 2015 and September 2015 in Accra in the Greater-Accra Region, wilfully caused financial loss of $502,227.00 to the State.

Count Seventeen

Statement of Offence

Conspiracy to commit crime namely, Wilfully Causing Financial Loss to the State contrary to Sections 23(1) and 179A (3)(a) of the Criminal Offences Act, 1960 (Act 29).

Particulars of Offence

(1)Ernest Thompson, (2) John Hagan Mensah, (3) Peter Hayibor between January 2016 and September 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose to wilfully cause financial loss to the State.

Count Eighteen

Statement of Offence

Wilfully Causing Financial Loss to the State contrary to section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

Particulars of Offence

1) Ernest Thompson, 2) John Hagan Mensah, 3) Peter Hayibor between January 2016 and September 2016 in Accra in the Greater-Accra Region, wilfully caused financial loss of $5,141 ,905.66 to the State.

Count Twenty

Statement of Offence

Contravention of the Public Procurement Act contrary to Section 92(2)(a) of the Public Procurement Act, 2003 (Act 663).

Particulars of Offence

1) Ernest Thompson, 2) Juliet Hassana Kramer in September 2013 in Accra in the Greater-Accra Region colluded to quote the price for the supply of two servers for the Contact Centre Avaya Solution at $28,500.00, instead of the original quotation of $50,000.00 in order to obtain unfair advantage in the award of a contract to PBS Limited.

Count Twenty-Two

Statement of Offence

Contravention of the Public Procurement Act contrary to Sections 18(4)(a) and 92(1) of the Public Procurement Act, 2003 (Act 663).

Particulars of Offence

Ernest Thompson between November 2015 and December 2016 in Accra in the Greater Accra Region approved the sum of $9,536,652.50 an amount which is above the threshold of the head of an entity."

(14) The trial High Court after hearing arguments from the parties herein, as well as the 2nd and 3rd accused persons who had separately filed similar

applications before the trial High Court, *(having consolidated same)* ruled on 16th April, 2019 declining the Respondent's application in its entirety.

(15) The Trial Judge opined that the charges as laid contained adequate and reasonable details and particulars to enable the accused persons appreciate the nature of the charges brought against them. Dissatisfied with the ruling of the trial High court, the Respondent escalated his prayer for an order compelling the prosecution to provide details of the acts and/or omissions the reason for which he is being prosecuted, with the offences the subject matter of the proceedings, before the trial High Court by an appeal to the Court of Appeal.

(16) **APPEAL TO THE COURT OF APPEAL**

In his appeal to the Court of Appeal by notice of interlocutory appeal filed on 26th April 2019, the Respondent prayed the Court of Appeal to set aside the ruling of the trial High Court refusing his prayer for an order compelling the prosecution to provide details of the acts and/or omissions, the reason for which he is being prosecuted. In the said notice of appeal to the Court of Appeal, the Respondent attacked the decision of the trial High Court on the following grounds:

" i. The Learned Judge committed an error of law when he held that Section 112 of Act 30 (as amended) has been complied with by the Prosecution.

PARTICULARS OF ERROR OF LAW

i. By the provision of Article 19(2)(d) of the 1992 Constitution the

Prosecution is required by law to provide details of a charge and not to provide "sufficient" information of the charge to Appellant.

ii. The Learned judge misdirected himself on the duty imposed on the Prosecution under Article 19(2)(d) of the 1992 Constitution by equating provision of "details" to an accused to provision of "evidence".

iii. The Learned Judge committed an error of law when he upheld the Court of Appeal's decision interpreting Article 19(2)(d) of the 1992 Constitution.

PARTICULARS OF ERROR OF LAW

i. By law, it is only the Supreme Court which has the power to interpret the constitution.

ii. That the interpretation by the Court of Appeal of article 19(2)(d) is null and void and not binding on the High Court.

iii. The Learned Judge erred when he interpreted article 19(2)(d) of the 1992 Constitution.

(17) The grounds of appeal on which the Respondent challenged the decision of the trial High Court to the Court of Appeal, reaffirms the earlier observation that the appeal before this court turns on the true and proper interpretation to be placed on the provisions of article 19(2)(d) of the Constitution. This is obvious from

the Respondent's first ground of appeal before the Court of Appeal. This ground assails the decision of the trial High Court on the ground that the High Court committed an error of law when it held that Section 112 of Act 30 *(as amended)* has been complied with by the Prosecution.

(18) In particularizing his first ground of appeal to the Court of Appeal, the Respondent contended that by the provisions of article 19(2)(d) of the 1992 Constitution the prosecution is required by law to provide *"**details**"* of a charge and not to provide "***sufficient***" information of the charge to the Respondent. The Respondent proceeded to contend in the second ground of appeal before the Court of Appeal that, the trial High Court misdirected itself on the duty imposed on the prosecution under Article 19(2)(d) of the 1992 Constitution by equating provision of "***details***" to an accused to provision of *"**evidence**".*

(19) The issue of interpretation was more forcefully canvassed in the third ground of the Respondent's grounds of appeal to the Court of Appeal wherein he alleged that the trial High Court committed an error of law when it upheld the Court of Appeal's decision interpreting Article 19(2)(d) of the 1992 Constitution. The Respondent explained this error in the particulars of error of law by contending that, it is only the Supreme Court which has the exclusive jurisdiction to interpret the Constitution for which reason any interpretation by the Court of Appeal of Article 19(2)(d) of the constitution is null and void and not binding on the High Court.

(20) This issue of interpretation is repeated in the Respondent's fourth ground of appeal to the Court of Appeal in which the Respondent again assails the decision of the trial High Court on the ground that the said court erred when it interpreted Article 19(2)(d) of the 1992 Constitution.

(21) **JUDGMENT OF THE COURT OF APPEAL**.

On 3rd April 2020, the Court of Appeal by a majority decision upheld the Respondent's appeal and consequently directed the Prosecution to amend the Counts in the charge sheet and provide additional details to enable the Respondent have reasonable information to enable him prepare adequately for his defence. In coming to its decision, the majority of the Learned Justices of the Court of Appeal made the following observations:

"(a) In the view of the Court, from the grounds of appeal and the submissions of the Respondent all that he is complaining about is that the particulars of offence of some the charges do not provide him with adequate information to enable him organize his defence.

(b) What is needed and should be supplied to the Accused Persons on application of both Article 19(2) (d) and Section 112 (1) and (2) is information on a charge sheet considered detailed and therefore reasonable in the peculiar facts of each case to enable accused prepare his defence. Understood in this way, both provisions can co-exist without descending into any intricate interpretation exercise.

(c) What may be mentioned in the facts of the case by the prosecution may not necessarily be part of the particulars of offence which the prosecution is obliged to prove. The Accused is not charged under the facts but under the charge sheet which includes the particulars of offence. To contend therefore that the facts

of the case as narrated by the prosecution is necessarily part of the information channels from which the Accused must know the particulars of offence for which he has been charged for which reason the Accused need not insist on anything more, should not be an appealing proposition to make.

(d) Section 112 of Act 30 does not make the facts supplemental to the particulars provided in the charge. Whether or not reasonable information has been given the Accused Person in the particulars of offence is on a case by case basis. Each case will have to be examined within its own facts and circumstances. The particulars of offence should provide the basic facts which will have to be adduced at the trial.

(e) Where the facts are intricate it may be necessary to provide more detailed particulars than where the case is devoid of any intricacies.

(d) In the case of ***Ali Yusif Issa Vs. The Republic (No.1) (2003/4) 2 SCGLR 289 & The Republic [2003-4]2 SCGLR 174,) (Issa case)*** *their Lordships were considering the charge faced by the Accused within the factual circumstance of that case when they held that the particulars of offence disclosed reasonable information for his defence. We do not understand their Lordships in the Issa case to have settled the principles regarding the particulars of offence in every charge and that it is sufficient if the charge laid contained information on;*

1. The name of the Accused.

2. The date of the alleged commission of the offence.

3. The region.

4. The amount of loss and no other details or information as we have in the Issa case.

(e) Understood as such we are of the opinion that the case cannot be

Be a binding authority on what the particulars of offence should contain, as the Trial Judge appears to have concluded. The Court of Appeal and Supreme Court in the Issa case could not have determined what the particulars of offence should be in every charge under Section 179A (3) (a).

(f) *In each case under Section 179A (3)(a) of causing financial loss to the state, the nature of the particulars of offence will have to be determined based on the facts and complexity of each case. The basic facts of the case should be provided in the particulars of the offence.*

(g) *What evidence needs to be provided is dependent on the peculiarities of each case. It will be defeating of our present day anti-ambush litigation to feel threatened providing requisite particulars on a contention that, that will be providing evidence.*

(h) *Provision of reasonable particulars in a charge sheet should be seen as one of the disclosure mechanisms emphasized in the case of the* ***Republic Vs. Eugene Baffoe Bonnie & 4 Others*** *Suit No. J6/1/2018 of 7th June, 2018 aimed at balancing the scales between the Accused Person and the State.*

(i) *From the* ***Republic Vs. Eugene Baffoe Bonnie & 4 others*** *case' it is clear to us that where further particulars of offence ought to be provided to the Accused, that will have to be done unhesitantly. It should not always be the prosecution that should lead and decide what to disclose for the trial.*

(j) *The Accused also has the right to demand disclosure if what he*

deems necessary to properly inform him of the particulars of the offence in respect of which he has been charged have not been supplied by the prosecution and must not necessarily rely on what the prosecution provides.

(k) The facts or disclosures cannot be a source of information to supply reasonable information before the Accused pleads to the charge. This is so because in the sequel of events the Accused pleads to the charge before the facts are read out and also before any disclosures are made.

(l) Section 112 of Act 30 does not admit of any assistance from facts of the case or disclosures as part of the requisite particulars of offence.

(m) Failing to provide the necessary particulars has the potential of Prejudicing the Accused's right to seek for appropriate disclosures.

(n) The right to disclosure does not dispense with the duty placed on the Prosecution to provide an accused person with sufficient information of the charges against him in the particulars of the charge under Section 112 of Act 30 neither does it take away the right of an Accused to demand sufficient particulars of the charge against him where the information contained in the particulars is deficient.

(o) That an accused person will be entitled to disclosures, both pre-trial and in the course of trial, should not be sufficient reason to deny him the requisite particulars the section has demanded he be given, particularly at the beginning of the trial to enable him organize his defences.

(p) There is a difference between the statement of offence and the particulars of offence. The difference lies in the further particulars that will make it clearer to the Applicant what exactly he is being charged for.

(q) We are of the view that the particulars of offence in Counts 2, 4, 8, 10, 12, 14, 16, 18 and 22 do not meet the requirement of sufficient particulars as demanded by Section 122 of Act 30.

(r) Counts 1, 3, 5, 7, 9, 11, 13, 15 and 17 are conspiracy charges for which there could be conviction separate from the substantive offices. It behoves on the prosecution to provide further information in the particulars of these offences to enable the Respondent know for what he is alleged to have conspired."

(22) The Prosecution being dissatisfied with the majority decision of the Court of Appeal aforesaid, appealed from the said decision. This appeal therefore raises an important issue in our criminal law jurisprudence particularly on the practice and procedure in formulating charges and the extent to which it is impacted by the provisions of Article 19(2)(d) of the 1992 Constitution. It is in this context that the appeal before this court must be appreciated and understood. But for the clarity that this case will provide to the preferment of charges in our jurisdiction, the first obstacle that the appeal would have been required to surmount is the question whether or not the Court of Appeal's decision on appeal to this Court serves the interest of justice or otherwise. In other words, what harm would the prosecution suffer or how is the administration of justice undermined by providing the details of the charges requested by the Respondent to enable him prepare in defence of the charges brought against him?

(23) **APPEAL TO SUPREME COURT**

The grounds on which the prosecution has invoked the appellate jurisdiction of this court have already been fully set out in this judgment. As earlier observed with regard to the grounds formulated, ground (c) encapsulates the crux of the

appeal to this court. The said ground raises the question as to the extent to which the provisions of Section 112 of the Criminal and Other Offence (Procedure) Act, 1960 (Act 30) are affected by the provisions of Article 19(2)(d) of the 1992 Constitution. I shall therefore proceed to discuss the constitutional provisions of Article 19(2)(d) of the 1992 Constitution first. Thereafter, I shall examine the grounds of appeal urged on this court. This approach is inevitable since the court has to consider the meaning and effect of the said constitutional provision.

(24) **INTERPRETATION OF ARTICLE 19(2)(d) OF THE 1992 CONSTITUTION.**

Article 19(2)(d) of the Constitution provides as follows;

"(2) A person charged with a criminal offence shall

(d) be informed immediately in a language that he understands, and in detail of the nature of the offence charged".

The basic rule in the interpretation of statutes including the Constitution is that, courts must strive to uphold the plain meaning of the statutory provisions under construction. In the case of **Republic Vs. High Court, Accra (Commercial Division); Ex parte Hesse (Investcom Consortium Holdings SA & Scancom Ltd. - Interested Parties) [2007-2008]2 SCGLR 1230,** Wood CJ referred to her earlier decision in the case of **Republic Vs. High Court, Accra; Ex-parte Yalley (Gyana & Attor Interested Parties) [2007–2008] SC GLR 512** in which her ladyship examined the case law on statutory interpretation and observed that in the construction of statutes, the literalist, ordinary, plain, or grammatical meaning, should be adhered to, if it clearly advances the legislative purpose or intent and does not lead to any outrageous or absurd consequences.

(25) Bearing in mind the rule of interpretation just referred to, the question that arises is simple; what is the plain meaning of article 19(2)(d) of the 1992 Constitution? The first thing to note in article 19(2)(d) of the 1992 Constitution is the fact that it is mandatorily couched. This is confirmed by the use of the word ***"shall"*** appearing in the provision. Section 42 of the Interpretation Act requires the Court to place a mandatory meaning on the word ***"shall"*** wherever it appears in a statutory provision unless the context otherwise requires.

(26) Thus, the plain meaning of article 19(2)(d) of the Constitution clearly is that a person charged with a criminal offence must be informed, "***in detail***" of the nature of the offence charged. The words ***"in detail"*** appearing in the constitutional provision emphasizes the extent of information required for purposes of complying with the said constitutional provision. The plain meaning ascribed to the provisions of Article 19(2)(d) of the 1992 Constitution is more compelling when account is taken of the general purpose of article 19 itself. Its side notes indicate that it has to do with fair trial. The whole of Article 19 of the Constitution is therefore devoted to ensuring that accused persons enjoy the fundamental right to a fair trial. In the first clause therefore, it provides that;

"19.(1) A person charged with a criminal offence shall be given a fair hearing within a reasonable time by a court."

(27) All of the subsequent provisions of the article then set out the various matters necessary for ensuring that, from the time the criminal process is initiated against a person, all steps taken must ensure safeguard this right to a fair trial. This is the context in which the provisions of Article 19 Clause (2) (d) of the 1992 Constitution must be applied.

(28) Interestingly, this position is not without precedent as this court has previously taken the same view. When in determining the requirement of the charge sheet, the two specific matters of the statement of the offence and the particulars thereof, the majority in the case of **Osei Kwadjo II Vs. The Republic [2007-2008]2 SCGLR 1148** held to the same effect. It must be pointed out however that the part of the judgment in which the issue raised by the instant appeal was decided are omitted from the report but are contained in the unreported judgment. **(See the unedited judgment in Criminal Appeal No.2/2000 dated 11th July, 2008).**

(29) In identifying the very issue before us in this appeal, Kpegah JSC in delivering the majority decision of this court in the case under reference observed that, the court had raised *suo motu* an issue regarding defective particulars contained in the charges the appellant was required to defend. The majority of the court had taken the view that, the defective charges could undermine the whole trial. In interpreting Article 19(2)(d) of the 1992 Constitution, Kpegah JSC in characteristic detailed erudition held *inter alia* that:- ***"...the comma before the "and" makes the "and" disjunctive and clearly indicates that the person charged must not only be immediately informed of the nature of the offence in a language he understands, but also "IN DETAIL."***

The majority of the court noted that an indication as to the true and proper meaning and effect of the constitutional provision in issue before the court was provided by the earlier case of **Osei Vs. The Republic (No.2) [1971] GLR 449 HC.** In the said case, the High Court relied on the provisions of Article 20(2)(c) of the 1969 Constitution which is in *pari materia* with Article 19(2)(d) of the 1992 Constitution and allowed an appeal against a conviction for want of sufficient particulars to meet the constitutional and statutory requirement.

(30) In determining the instant appeal therefore, I am guided by the meaning ascribed to Article 19(2)(d) of the 1992 Constitution by the majority decision in the **Osei Kwadjo II case** (supra). The Court's decision therefore is that Article 19(2)(d) of the Constitution cannot mean more or less than its plain and unambiguous words present. Accordingly, Article 19(2)(d) of the constitution having been already interpreted by this court, it paves the way for the court to examine the arguments canvassed by the prosecution on the grounds of appeal on which basis the prosecution has invoked the appellate jurisdiction of this Court.

(31) **APPELLANT'S ARGUMENTS.**

GROUNDS (A)

"The Court of Appeal erred when it refused to follow its own previous decision affirmed by the Supreme Court, which is binding on the Court."

In support of this ground of appeal, the prosecution argues that the Court of Appeal erred when it refused to follow its own previous decision in **Ali Yusuf Issa (No.1) Vs. The Republic [2003-2004] 1 SCGLR 189** *(hereinafter conveniently referred to as Issa No.1)* which was affirmed by this Honourable Court in the case of **Ali Yusuf Issa (No.2) Vs. The Republic [2003-2004] 1 SCGLR 174** (*hereinafter conveniently referred to as Issa No. 2).* The prosecution contends that even though these two decisions *(Issa No.1)* and *(Issa No.2)* were brought to the attention of the Court of Appeal and were respectfully urged on that court, it refused to follow the said decisions.

(32) The prosecution has argued further that, the majority of the Court Appeal declined the invitation to tread the path of the decisions aforesaid though in the case under reference, the Court of Appeal was called upon in *(Issa No. 1)* to determine the legality of the charge laid under Section 179 of the Criminal Offences

Act, 1960 (Act 29) within the context of Articles 19(11) and Article 19(2)(d) of the 1992 Constitution. The prosecution further contends that, since *(Issa No.1)* determined that the charge as laid had met the legal and constitutional requirements, the Court of Appeal in the instant case could not depart from that decision to hold that, the charges which have been drafted in the same material manner, did not meet the constitutional and other legal requirements. The prosecution argues that that the Court of Appeal was bound not just by its own previous decision but by the decision of this Court in *(Issa No.2)* as well. The question then is: ***Have the Provisions of Article 19(2)(d) of the Constitution been interpreted previously?***

(33) A reading of the decision of this Court in (*Issa No.2)* will reveal that the only part of the judgment of this Court which discussed the provisions of Article 19(2)(d) of the Constitution is that which appears in page 187 of the report where Sophia Akuffo JSC *(as she then was)* held as follows; *"In coming to the foregoing conclusions, we would state that, in a nutshell, we have taken into consideration all the proceedings in this case and all papers filed on behalf of the parties, including interlocutory proceedings, the grounds of appeal filed and everything laid before this court and we have determined that:-*

i. ***The charge based on the Criminal Code, (Act 29) as amended,***

i.e. Section 179A (3)(a), is constitutional and has been legitimately laid under the Criminal Code. The charge and the provisions under which it was brought have in no way violated the provisions of Article 19 of the Constitution. We fully adopt and affirm the reasons and opinions of the Justices of the Court of Appeal (Coram: Brobbey, Baddoo and Amonoo-Monney JJA) in Ali Yusuf

(No.1) Vs. The Republic (No.1), CRA 22/2001, 25 June 2001 (reported in [2003-2004] 1 SCGLR 189 post).”

(34) In reporting on the nature of the proceedings, it is clear from a reading of the report that the judgment of this Court in the (*Issa No.2)* case resulted from an appeal from the judgment of the Court of Appeal which had affirmed the Appellant's conviction. The report is therefore clear that the judgment of this Court in (*Issa No.2)* resulted from the appeal to this court. At page 181 of the report, the judgment of this Court on the nature of the proceedings is confirmed in the following words:-***“At the hearing of this appeal, we drew the attention of counsel for the Appellant to the interlocutory appeal in which he had raised the issue as to the constitutionality of the charge brought against the Appellant in count two. Counsel's reply was that, once an appeal is by way of a rehearing, the Court of Appeal's decision on the constitutionality of the charge, together with its decision on all other issues, are all before us. He, therefore, invited us to consider all of the record before us.”*** In delivering itself this Court particularly noted as follows:- ***“Regarding the evidence, we have reviewed the entire record of proceedings and have no doubt that the Appellant's conviction, as well as the confirmation thereof by the Court of Appeal and the respective reasons, given by the learned Justices of Appeal for their conclusions, are amply supported by the evidence adduced by the prosecution.”***

(35) It is undoubtedly apparent that the decision of this Court therefore turned on the view taken that, the Appellant's conviction in that case was amply supported by the evidence adduced by the prosecution. The decision therefore can be fairly said to have resulted from the peculiar facts of the case before this Court which in the exercise of its appellate jurisdiction is confined to the record before it in exercise of its power of rehearing. To the extent that this Court adopted and

affirmed the opinions of the Justices of the Court of Appeal in *Ali Yusuf (No.1)* regarding the charge based on the Criminal Code, (Act 29) as amended, i.e. Section 179A (3)(a) as legitimately laid under the Criminal Code and in no way violative of the provisions of Article 19 of the Constitution, I shall briefly examine the decision of the Court of Appeal in the (*Ali Yusuf No.1)* case.

(36) From my reading of the judgment of the Court of Appeal in the *(Ali Yusuf No.1)* case, there is no doubt whatsoever that the judgment turned on the peculiar facts of the case. The judgment Brobbey JA *(as he then was)* bears this out. The Learned Justice noted that in so far as the peculiar facts of the case were concerned, the Appellant knew the details of the charges he was facing. He particularly pointed out in page 200 of the report as follows: - ***"If charges have been preferred against him, and which he will be required to answer by way of his defence. If the particulars were not detailed to the appellant, the questions that may be asked are these three: was the Appellant given US$46,000 belonging to a public body; Secondly, has he produced it to its owner; and thirdly, is it lost? These questions in no way imply that the Appellant has stolen the money or has misappropriated the moneys. However, the Appellant knows that he was given US$46,000 and he also knows that the money was lost at a time when the rightful owner had not received it from him. If he is charged with an act or omission that has resulted in the loss of the US$46,000 what other detail does he need in order to prepare his defence to the charges?"*** His Lordship had earlier in the judgment pointed out as follows: - ***"Needless to say, the essence of reasonable information is to enable the accused to know the nature of the charge he faces so as to enable him to adequately prepare his defence to the charge. Therefore, what one should ask is whether or not from the particulars, the appellant or any objective reader of the charge will know what kind of allegations have been levelled against the appellant for which the***

charges have been preferred against him, and which he will be required to answer by way of his defence."

(37) From a review of the judgment of Brobbey JA *(as he then was)* there is no doubt in my mind that, the Court of Appeal based its decision on the peculiar facts before the Court. The Court of Appeal in that case therefore reached the conclusion after a review of the charges preferred against the Appellant and held that: - ***"The particulars surely inform the appellant that he was given US$46,000 which were lost and it was for that loss that he was charged and so he was required to prepare and make his defence to that allegation of the loss of the US$46,000. That is all. In other words, the information contained in the particulars of the second charge are reasonable enough for the appellant to know why he had been charged in court. No more detailed particulars are required to inform the Appellant of the facts constituting the second charge."***

(38) The observation just made is also obvious from the judgments of the other Learned Justices of the Court of Appeal. Each of them examined the charge sheet and reached the conclusion that the charges contained sufficient information to enable the Appellant prepare his defence. In the judgment of Baddoo JA *(as he then was),* it is reported in pages 205-206 as follows: - *"**Now the question is, does the particulars in count two comply with the provisions of Section 112 of Act 30? Do the particulars give the appellant reasonable information as to the offence he has committed? Yes, the particulars do give reasonable information to the appellant of the charge brought against him. The particulars state that through his fraudulent action, the Ghana Football Association incurred a loss of $46,000."***

(39) This conclusion resulted from an examination of the charge sheet. The judgment of Amonoo-Monney J.A is also instructive on this point. For his part, the

learned Justice took the view that given the extensive nature of the investigations by the Appellant's interaction with the police, the details of the offence in respect of which he was charged, must have been clear to him by the time he was arraigned before the trial court for trial. It must be noted that, the judgment of Amonoo-Monney JA may be contrasted with that of **Hodgson Vs. The Republic [2009] SCGLR 642** decided by this court. In that case, this Court also considered the effect of the provisions of Article 19(2)(d) of the Constitution in an appeal before the Court. This court noted at page 658 as follows: - ***"On the first ground of appeal, counsel for the Respondent, Evelyn Keelson, contends that what the Appellant needed was reasonable information to enable him prepare and defend himself. She referred to Section 112(1) the Criminal and Other Offences (Procedure) Act, 1960 (Act 30)."*** On the same page of the report, this court noted as follows:- ***"Counsel also made reference to Section 406(1) of the same Act 30 and submits that by this section, a finding, sentence or order passed by a court of competent jurisdiction cannot be altered or reversed or altered on appeal or review on account of error, omission or irregularity in the complaint, summons, charge, judgment, order, etc. unless such error, omission, irregularity or misdirection, has in fact occasioned a substantial miscarriage of justice. Counsel also referred to Section 31(2) of the Courts Act, 1993 (Act 459) ...."*** This Court then proceeded to note at page 664 as follows:- *"On Article 19(2)(d) of the 1992 Constitution,... What the Article 19(2)(d) states is* ***"A person charged with a criminal offence shall be informed immediately in a language that he understands, and in detail of the nature of the offences charged."*** *In the light of the wording in the statement of offence as stated in the charge sheet, Exhibit AA, the Appellant was informed of the offences with which he was being charged and, indeed, this was in the presence of his counsel lawyer Addo- Atuah. He had relied on an earlier statement he had made to the police. At the trial, he knew the nature of the offences he was being tried for and from the first count and, on the evidence,*

the particular offence which he conspired to commit was made clear to him. We therefore do not agree that Article 19(2)(d) was infringed upon".

(40) In all of these cases therefore, this Court examined the evidence before the Court in determining the fundamental human rights provisions of the Constitution in relation to the Appellant's right to a fair trial. In the instant case however, the objection has been raised *in limine*. Having regard to the consideration given to the *Issa cases* and that of ***Hodgson***, it is legitimate to say that the only real case in which the court may be said to have laid down principles of interpretation of Article 19 of the 1992 Constitution is the **Osei Kwadjo II case**. Although that case was also decided in the context of an appeal, this court took time to explain the meaning of the constitutional provision in issue. In this judgment part of that interpretation has already been referred to.

(41) *Did the Court of Appeal in the instant appeal refuse to follow the Issa decisions?* In contrasting the decisions of the Court of Appeal and that of the Supreme Court in the *Issa cases* with the decision of the Court on appeal in the instant appeal, it is difficult to agree with the Prosecution that the Court of Appeal refused to follow the said decisions. As already pointed out, the decision of this court in the *Issa case* on the point under discussion affirmed the decision of the Court of Appeal after re-hearing the appeal without adding anything. A careful reading of the judgment of the Court of Appeal in the *Issa case* confirms without a shadow of doubt that all three Learned Justices of the Court of Appeal affirmed the fundamental human right enshrined in Article 19(2)(d) and stated unequivocally that every accused person is entitled to reasonable information to enable him know the nature of the charge he faces so as to enable him adequately prepare his defence to the charge. The Learned Justices however took the view that on the evidence before the court,

the Appellant's complaint that his fundamental human rights guaranteed by Article 19(2)(d) of the Constitution had been violated had not been made out.

(42) In the instant appeal, I donot accept the contention of the prosecution that the Court of Appeal committed any error of law as alleged in first ground of appeal. The conclusion reached by the Court of Appeal in this case is in tandem with that of the Court of Appeal in the *Issa case* in so far as the principles for formulating charges are concerned. I hold the view that the proper formulation of criminal charges requires the prosecution to sufficiently indicate to the accused person the nature of the acts the commission or omission of which has led to the event which the law has prohibited with penal consequences for its violation.

(43) I take note that in the instant appeal, although the Court of Appeal applied the principles in the *Issa case* as therein declared, it reached a different conclusion from that in the *Issa case* because the facts and circumstances of the two cases are peculiarly different. The doctrine of *stare decisis* as enshrined in Articles 129 clause (3) and 136 clause (5) of the 1992 Constitution requires that the principles of law settled in by the Court of Appeal and the Supreme Court be followed. In following and applying the same principles however, the Supreme Court and the Court of Appeal may reach the opposite conclusion of the case whose principles were followed and applied on the basis of the varying facts that are considered in each case as the court is not constitutionally enjoined to walk into the full jacket of judicial precedent irrespective of the peculiar facts giving rise to a dispute. It cannot therefore be overemphasized that judicial decisions are made to resolve particular disputes. Thus each decision derives its peculiar quality of justice, soundness and profoundness from the surrounding factual circumstances

peculiar to the case it is presumed to adjudicate within the context of the relevant applicable law.

(44) **Ground b**

In the Prosecution's second ground of appeal, the prosecution assails the judgment of the Court of Appeal as follows: - ***"The Court of Appeal erred when it held that the Prosecution has failed to provide sufficient details as required by Section 112 of the criminal and other offences (Procedure) Act 1960 (Act 30), in the particulars of the charges preferred against the Appellant/ Respondent".*** It is noted that, in the *Issa No.1* case, Brobbey JA *(as he then was)* explained Section 112 of Act 30 as follows: - *"That ground raised the perennial issue as to what particulars should be included in a criminal charge. The well-settled rule is that the charge should contain sufficient particulars that will enable the accused person to know the nature of the charge he faces. This principle was well settled by the Criminal Procedure Code (Amendment) Act, 1965 (Act 261), which amended the original provision in Section 112 of Act 30. The relevant provisions of section 1 of Act 261 read as follows: -*

"(1) Subject to the special rules as to indictments hereinafter mentioned, every charge, complaint, summons, warrant or other document laid, issued or made for the purpose of or in connection with any proceedings before any court for an offence shall be sufficient if it contains a statement of the offence with which the accused person is charged together with such particulars as may be necessary for giving reasonable information as to the nature of the charge and notwithstanding any rule of law to the contrary it shall not be necessary for it to contain any further particulars than the said particulars."

(45) Therefore, the earlier decision of the Court of Appeal clearly affirms the requirement of law that, the charge must contain sufficient particulars that will enable the accused person to know the nature of the charge he faces. The Court of Appeal confirmed that the emphasis on the section is the fact that the particulars should be such as are necessary to give reasonable information to the accused.

The meaning and effect of the section was considered in the **Osei Kwadjo II case** where the court referred to one of the leading textbooks in Criminal Procedure by a respected jurist on the particulars required by Section 112 of Act 30; Justice A.N.E Amissah's academic work "**CRIMINAL PROCEDURE IN GHANA"** which treats the subject of the contents of a properly laid charge relating to the: - ***(i) statement of offence, and (ii)particulars of offence.***

(46) In respect of the statement of offence, the Learned Jurist and author stated at page 76 thus: -

"The statement must describe the offence shortly in ordinary language, avoiding as far as possible the use of technical terms, and without necessarily stating all the essential elements of the offence, and, if the offence is one created by enactment must contain a reference to the enactment. In meeting this latter requirement care must be taken to distinguish between two types of statutory provision which usually deal with an offence: the one which creates the offence and the other which defines it. As between these two it is the provision creating the offence which has to be referred to, not the provision defining it. Thus in the case of murder, Section 46 of the Criminal Code provides that: 'whoever commits murder shall be liable to suffer death. Then Section 47 of the Code defines murder". The Learned Jurist then continues: ***"It is the section which creates the offence which must be referred to in the statement of offence not the section which defines it. A charge of murder,***

therefore, must refer in its statement of offence to Section 46 of the Criminal Code and not to Section 47".

(47) On the particulars of offence, the Learned Justice and author stated at page 77 as follows: - ***"It is necessary to state under this head such particulars of the offence as may be necessary for giving reasonable information as to the nature of the charge. The necessary particulars must be set out after the statement of offence in ordinary language. The use of technical terms is not required…. Drafting of the particulars of offence charged often involves following with some precision the wording of the section defining the crime and alleging that the accused did an act having the ingredients of the offence. Supplying the defective particulars have often led, and may still lead……. to the quashing of a conviction based on a charge".*** On what the written charge against the accused person must contain, the learned editors of the Fifth Edition of Halsbury's Laws of England, Volume 27 write in paragraph 126 under the rubric: -

*"**126. The written charge and requisition. Under the Criminal Procedure Rules, an allegation of an offence in a charge must contain:***

(1) a statement of the offence that describes the offence in ordinary language, and identifies any legislation that creates it; and

(2) such particulars of the conduct constituting the commission of the offence as to make it clear what the prosecutor alleges against the Defendant."

(48) I have taken note of the position of the Learned Jurist ANE Amissah whose work is above referred to where he stated that the particulars of offence must; "***allege the act which the accused did relative to the ingredients of the offence".*** In

the same vein, I also take note of the explanation given by the learned editors of Halsbury's of England that the allegation of the offence in a charge; ***"must contain such particulars of the conduct constituting the commission of the offence as to make it clear what the prosecutor alleges against the Defendant."*** The authorities just reviewed are all in agreement that in criminal procedure, the only circumstances in which a charge can be deemed to be properly laid is where the particulars of the charge sufficiently inform the accused person of the specific acts and/or omissions that the accused person engaged in which resulted in the event; the reason for which he is being prosecuted.

(49) It must be clarified here that specifying the acts and/or omissions constituting the offence is completely different from making available the evidence required to prove those acts and/omissions. Thus, in the context of the issue in the instant appeal, the questions which logically arise for determination are as follows: -

i. ***Do the particulars of the offence of conspiracy to commit crime, stated in counts 1, 3, 5, 7, 9, 11, 13 and 15 of the charge specify any an particular act and/or omission committed by the Respondent which constitutes the offence of conspiracy?***

ii. ***Do the particulars of the crime of willfully causing financial loss to the Republic stated in counts 2, 4, 6, 8, 10, 12, 14 and 16 of the charge sheet specify any act and/or committed by the Respondent which constitutes the offence of willfully causing financial loss to the Republic?***

(50) **<u>CONSPIRACY TO WILLFULLY CAUSE FINANCIAL LOSS</u>**

Counts 1, 3, 5, 7, 9, 11, 13 and 15 set out in the charge sheet allege that the Respondent as well as the second and third Accused persons, conspired to willfully cause financial loss to the State. It is in counts 2, 4, 6, 8, 10, 12, 14, 16 and 18 that the Respondent is then alleged to have willfully caused financial loss to the state. In the case of **Francis Yirenkyi Vs. The Republic Criminal Appeal No.J3/7/2015** dated the 17th day of February 2016, this court discussed the current law on conspiracy. The Court, speaking through Dotse JSC noted the amendment of the definition of the offence of conspiracy under the Criminal and other Offences Act, (Act 29) of 1960 by the Statute Law Review Commissioner. Under the old definition of the offence of conspiracy a conviction could be secured upon proof of the following ingredients;

i. Prior agreement for the commission of a substantive crime.

ii. Acting together in the commission of the crime in circumstances which show that there was a common criminal purpose.

iii. Previous concert even if there was evidence that there was previous meeting to carry out the criminal conduct.

Whereas the old formulation of the provision on the offence of conspiracy under Section 23(1) of Act 29 therefore provided as follows:- ***"If two or more persons agree or act together with a common purpose for or in committing or abetting a crime, whether with or without any previous concert or deliberation, each of them is guilty of conspiracy to commit or abet that crime, as the case may be,"*** the new formulation is 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 any previous concert or deliberation, each of them is guilty of conspiracy to commit or abet the criminal offence".***

(51) In this new formulation, this court noted that the only ingredient that had been preserved is "***the agreement to act to commit a specific crime, to commit or abet commission of that crime".*** The effect of the new formulation of the offence of conspiracy as defined by this court is that the persons must not only ***agree or act,*** but must ***agree to act together for a common purpose.*** Having regard to this new formulation of the offence of conspiracy ***a person could no longer be guilty of conspiracy in the absence of any prior agreement***. At this stage, it is necessary to repeat for purposes of re-emphasizing the point raised in this ground of appeal the question I had posed earlier. The question is; Do the particulars of the offence of conspiracy to commit crime, stated in counts 1, 3, 5, 7, 9, 11, 13 and 15 of the charge specify any a particular act and/or omission committed by the Respondent which constitutes the offence of conspiracy? The question posed above may be reformulated thus; in what way did the Respondent act together with the second and third accused person to willfully cause financial loss to the Republic? What did he do together with the second and third accused persons to willfully cause this loss? I shall now proceed to examine the offence of willfully causing financial loss to the Republic itself.

(52) **WILLFULLY CAUSING FINANCIAL LOSS TO THE REPUBLIC.**

The case of **Republic Vs. Adam and Others [2003-2005] 2 GLR 661** provides a more illuminating discussion of the offence of willfully causing financial loss to the Republic. In that case, five accused persons were tried before the then Fast Track Division of the High Court on charges of conspiracy to cause financial loss to the state. Head note (2) of the report records the holding of the Court expounding the essential elements of the offence of causing financial loss to the State. It states that:- *"(2) The essential elements of the offence of causing financial*

loss to the State under Section 179(A)(3)(a) of the Criminal Code, 1960 (Act 29), as amended by the Criminal Code (Amendment) Act, 1993 (Act 458) were (a) a financial loss; (b) to the State; (c) caused through the action or omission of the accused; (d) that the accused (i) intended or desired to cause the loss; or (ii) foresaw the loss as virtually certain and took an unjustifiable risk of it; or (iii) foresaw the loss as the probable consequence of his act and took an unreasonable risk of it; or (iv) if he had used reasonable caution and observation it would have appeared to him that his act would probably cause or contribute to cause the loss" In his judgment Afreh JSC of blessed memory held that:-***"For the prosecution to succeed it must show that the State incurred a financial loss through the action or omission of the accused person. Of the more than a dozen meanings of the word 'through', the most appropriate or relevant for this case are those indicating cause, reason or motive, in consequence of, by reason of, on account of, owing to, as a result of; by means of. In other words, it must be proved that the cause of the State's financial loss is the action or omission of the accused. There must be a direct causal link between the action or omission of the accused and the financial loss incurred by the State. It is not enough for the prosecution to show that the accused's action or omission could have caused or contributed to the loss."*** In the judgment under reference, the Learned Justice referred to the case of **Republic Vs. Selormey** in which Baddoo JA *(as he then was)* held that: - ***"In plain ordinary language, it means any deliberate act or omission of any person which results in a financial loss to the State constitutes an offence. Therefore for the prosecution to succeed in proving this charge against the accused person they must show that: (a) the accused person took certain actions; and (b) those actions resulted in financial loss to the State."***

(53) The question earlier posed in respect of the offence of willfully causing financial loss to the Republic was this; do the particulars of the crime of willfully causing financial loss to the Republic stated in counts 2, 4, 6, 8, 10, 12, 14 and 16 of the charge sheet specify any act and/or committed by the Respondent which constitutes the offence of willfully causing financial loss to the Republic?

(54) **CHARGES AGAINST THE RESPONDENT**

I observe that there is nothing in the particulars of the offence from which the Respondent who was Director General of Social Security and National Insurance Trust (SSNIT) may reasonably infer exactly what acts he engaged together with the second and third accused persons either by omission or commission to willfully cause financial loss to the Republic. A reading of the charge sheet will disclose that the statement of the offence describes the offences of conspiracy to cause financial loss on the one hand and the causing of financial loss itself on the other. This is done by reference to the enactment creating the said offences without stating the essential elements of the said offences. I further observe that, with respect to the particulars of the said offences however, the charge sheet does not contain any information in the particulars of the said offences such as to give the Respondent any reasonable information in terms of the details of the acts from which constitute the offences of conspiracy and the commission of the offence of willfully causing financial loss to the Republic.

(55) Indeed, this court, as did the Court of Appeal in the *Issa case*, has made it clear that the necessary details required to fulfil the constitutional requirement of providing the requisite information necessary to give the person charged with a criminal offence, information in terms of the details of the offence for which the

person has been charged, ***"must allege that the Accused person did or omitted to do a specific act having the ingredients of the offence".*** In the instant case, one of the charges states that the Respondent as well as second and third accused persons committed the offence of conspiracy to wilfully cause financial loss to the Republic contrary to Sections 23(1) and 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29). The details of this offence are stated in the particulars of offence that the Respondent and the second and third Accused persons agreed to act together with a common purpose to wilfully cause financial loss to the Republic.

(56) Undoubtedly, the question I have been struggling to answer is; from which part of the particulars of the offence has the Respondent been given the details of the offence of conspiracy? What the prosecution merely does is to repeat the definition provided for in the statute as the particulars. The **Osei Kwadjo case** (supra) encapsulates the position of the courts on what the particulars of the offence in respect of which a person is charged must contain in order to comply with the constitutional requirement that the person charged is entitled to and must be given details of the offence the subject matter of the charge before he can be properly prosecuted on the charge(s). The particulars of the offence as I have earlier pointed out must state such particulars of the offence as may be necessary for giving reasonable information as to the nature of the charge. This requires that the particulars of offence charged must state with some precision the wording of the section defining the crime ***and alleging that the accused did an act or omitted to do an act having the ingredients of the offence.***

(57) In the instant case, from an examination of the charge sheet, it is clear that there is simply no difference between the statement of the offence and the particulars of the offence in the manner in which the two are formulated by the

prosecution. One wonders how the Respondent *(as the Director General of SSNIT)* together with the third accused person who is the Chief Executive Officer of a company which did business with SSNIT ***agreed to act together*** with the third accused person to cause financial loss to the Republic.

(58) The point I have made is better illustrated by the following question; from what facts is the Respondent to know how he agreed to act together with the second and third accused persons the result of which is prohibited by the offence of conspiracy? It is the same with count three of the charge sheet which alleges the offence of conspiracy against the Respondent. The question which arises there is; from what facts is the Respondent to know how he ***agreed to act together*** with the second and third Accused persons to achieve the result prohibited by the offence of conspiracy?

(59) From my examination of the charge sheet, this offence of conspiracy runs through counts five, seven, nine, eleven, thirteen and fifteen where the Respondent is also alleged to have committed the offence of conspiracy. The particulars of the offence stated in each of these counts repeat the same thing. They all say that the Respondent and the second and third accused persons, between a particular period and in Accra in the Greater Accra Region of the Republic of Ghana, ***agreed to act together*** with a common purpose to wilfully cause financial loss to the State. There is nothing in the particulars of offence stated in respect of the aforesaid counts which gives the Respondent the details of the offence of specific acts and/or omissions from which this conspiracy can be inferred. The prosecution merely repeats the statutory definition of the offence. The particulars of the offence do not state such particulars of the offence as are necessary for giving reasonable information as to the nature of the charge. These observations I have made apply to the offence of wilfully causing financial loss to the Republic

stated in counts 2, 4, 6, 8, 10, 12, 14 and 16 of the charge sheet where it is alleged against the Respondent that he caused financial loss to the State in the specific sums mentioned in those counts. In none of those counts is it stated how and what acts or omissions caused the financial loss. They only state the result which is clearly insufficient to meet the constitutional and statutory threshold.

(60) In the light of the ingredients of willfully causing financial loss discussed in the *Adam case*, it is not clear from the particulars of the offence stated in counts 2, 4, 6, 8, 10, 12, 14 and 16 of the charge sheet as to what, or the nature of the act(s) or omission(s) the Respondent is alleged to have engaged in, as a result of which financial loss, was ***willfully*** caused to the State. It is also observed that the particulars of the offences disclose no facts from which the Respondent's willfulness in terms of his;

*"**(i) intention or desire to cause the loss; or***

(ii) foresight of the loss as in virtually certain that the loss will occur but took an unjustifiable risk of it; or

(iii) having foreseen the loss as the probable consequence of his act and took an unreasonable risk of it; or

(iv) that if he had used reasonable caution and observation it would have appeared to him that his act would probably cause or contribute to cause the loss."

(61) It must be pointed out here that specifying the acts and/or omissions constituting the offences charged is a totally different incident from providing the evidence required to prove the particularised act and/or omission. Informing the accused person of the very act and/or omission that he has engaged in and which is the reason for which he has been charged with the offences does not amount to

making available to the accused person the evidence required to prove those acts and/or omissions. Providing the details of the acts and/or omissions on the basis of which the person is facing prosecution will enable the person prepare well to defend the charges. It is in the light of the observation just made that the Prosecution's third ground of the appeal which contends that the Court of Appeal erred when it held that the prosecution must provide evidence or the basic facts to be adduced at the trial in the particulars of the charge sheet will be briefly examined.

(62) In the *Issa No.1 case*, the Court of Appeal took the view that the Appellant's complaint was that he required the evidence on the basis of which he will be prosecuted. The Court of Appeal disagreed. This is however not the same situation in the instant case where the Respondent's complaint before the trial High court was simple. He was the Director General of SSNIT. If it is alleged that he conspired with others and caused financial loss to the State, he must know the acts he engaged in from which the conspiracy with the third accused person who is not an employee of SSNIT or even the second accused person *(a SSNIT employee)* can be inferred. Even then, how was this loss caused? How much loss was caused?

(63) In the context of the factual background to this appeal, let me pause for a moment and ask; What prejudice does the Prosecution suffer by just making available to the Respondent the information relating to the specific acts he is alleged to have engaged in and from which the offences of conspiracy and willfully causing financial loss to the State can be inferred? I am not convinced by the simple argument that informing the Respondent as to the acts and/or

omissions he is alleged to have engaged in and from which the offences of conspiracy and willfully causing financial loss to the State can be inferred will entail giving the Respondent the very evidence it intends to rely on at the trial. Granted for the sake of argument that the prosecution's view that the request made amounted to a request for the evidence from which the prosecution will prove it's case were established as correct, the prosecution of the Respondent will certainly not be undermined by making available the evidence from which his guilt or otherwise will be determined. The Respondent will be deemed to have been given every opportunity and facility within the meaning of the fair trial provisions of the Constitution to prepare and defend the charges brought against him.

(64) The argument about the Respondent requesting evidence, although has been demonstrated to be incorrect, is weakened by the fact that the current practice direction on criminal trials requires the prosecution to file witness statements for witnesses they intend to call at the trial. The effect is that the accused person has the benefit of the evidence the prosecution intends to rely on at the trial to prove their case anyway. The argument therefore that complying with the Respondent's request will amount to making available to the Respondent the evidence to be deployed in proving the Respondent's guilt at the trial, is clearly untenable as it is misconceived. In any event, it is the court of trial which examines and evaluates the evidence, and if credible, will convict on the basis of the evidence and ascription of probative value to the standard prescribed by statute.

(65) This significant benign advance in ensuring fair trial in the criminal justice system through constitutional or other statutory or case law evolution is not

limited to our jurisdiction. Therefore, any proposition for a judicial intervention to rather limit or narrow and not expand its scope, should not be countenanced. The requirement of ensuring fair trials had decades ago been expressed by the Privy Council in the case of **Kandy Vs. Government of Malaya [1962] AC 322** where it was held that**; "*if the right to be heard is to be real right which is worth anything, it must carry with it, right in the accused man to know the case which is made against him. He must know which evidence has been given and what statements have been made affecting him, and then he must be given a fair opportunity to correct or contradict them*".** Where therefore the accused person does not know or is not given the full statement of facts against him, the court could declare it as being contrary to the concept of fair hearing.

(66) In my view, the court's consideration of the arguments canvassed by the Prosecution to support the grounds of appeal relied on in this appeal suffices to dispose of the third, fourth and fifth grounds of the appeal which contend that the Court of Appeal: -

i. ***misconstrued the import and purport of Article 19(2)(d) of the 1992 Constitution and Section 112 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30).***

ii. ***erred when it held that the prosecution must provide evidence or the basic facts to be adduced at the trial in the particulars of the charge sheet.***

iii. ***erred when it held that the particulars of the charges against the Appellant/Respondent as laid in the charge sheet are the same as the statements of offence.***

(67) In their statement of case, the prosecution attacked the majority decision of the Court of Appeal arguing that although the said court observed that whereas the facts recounted by the prosecution are not always accurate and reliable, and that the facts do not assist in determining the sufficiency of the particulars of the charge, the same court relied on the very facts it considered unreliable to condemn the prosecution's formulation of the charges against the Respondent. The prosecution's submission on the Court of Appeal's decision on the significance of the facts recounted by the prosecution during criminal trials does not do justice to the substance of the decision. It may well be true that in some instances, the course of the trial will expose the inadequacy of the facts on which the prosecution instituted the proceedings, but it is a totally different situation to suggest that the court and the accused person should assume such facts as inaccurate or that the prosecution deliberately presented unreliable facts to the court.

(68) As justice is the ultimate aim in all criminal trials, the practice enjoins the Court and the Accused person to rely on the facts recounted by the prosecution as fairly representing the foundation of the prosecution's case. It is on the basis of the facts recounted by the prosecution that the court will form a preliminary opinion on the decision to grant bail. If the court were to operate from the premises that the facts recounted by the prosecution must be presumed to be unreliable, then it will put the court itself in a difficult position with respect to the directions to make for the future conduct of the case. An accused person is also required and enjoined to rely on the facts recounted by the Prosecution to prepare his defence. The prosecution's submissions therefore on the value placed by the Court of Appeal

on the facts recounted by the prosecution implicitly does not credit the majority decision of the Court of Appeal with a basic understanding of the criminal process. The statements relied on by the prosecution to advance this argument does not deal with the substance of the appeal before the court. It has also been argued by the prosecution that all the issues raised by the majority decision show that they are matters to be determined at the trial where the case of the prosecution will be made and the Respondent would have the opportunity to defend same. This argument is superficial and untenable having regard to the clear provisions of Article 19(2)(d) of the 1992 Constitution as well as Section 112 of Act 30 which require that the criminal process be conducted in a manner that gives the accused person the opportunity to prepare for the trial, but not wait to be surprised at the trial.

(69) It is observed that given the current state of criminal procedure and practice which requires the prosecution to make available to the accused person in advance the evidence it intends to rely on at the trial, the reliance on the statements made by the Court of Appeal in the *Issa* case that the accused person is not entitled to request the evidence to be relied on at the trial against him, is with all due respect questionable. In any case, the Prosecution's arguments that to the extent that an accused person has the benefit of the documents intended to be relied upon must by implication be deemed that he has been informed of the very acts and omissions on the basis of which he is being prosecuted has potential limitations and consequences. The reason is not farfetched. Firstly, the prosecution is not compelled to rely on these documents at the trial. Further to this observation, there will be no clarity on the reason for which the prosecution intends to rely on those documents unless and until the very acts and/or omissions on which the charges

are grounded are disclosed. The effect is that an accused person is then damnified with the responsibility of guessing what acts and/or omissions relative to the mass of documents submitted to him are considered criminal thereby justifying prosecution. That cannot be fair to the accused person and definitely inconsistent with the constitutional and other statutory provision on fair trials.

(70) There is no gainsaying that the protection and guarantee of civil liberty, rights and freedoms is of prime consideration in criminal trials; under the 1992 Constitution. This aspiration is variously epitomized in our criminal jurisprudence. Very notable is the statutory standard set for proving crime which is prove beyond a reasonable doubt. I do not think that it will be far from right when I say that it is this ideal which is also a constitutional prescription that informed the celebrated decision of this Court in the case of **Republic Vs. Eugene Baffoe Bonnie & 4 Others; J6/06/2018 dated 7th June 2018** as a significant watershed in our criminal jurisprudence. The rights of an accused person in a criminal trial received a major boost in the *Baffoe Bonnie* case when this Court upheld the right of an accused person to demand that all that the prosecution intends to rely on should be disclosed to him before the trial.

(71) In elucidating the principle, Sophia Adinyira JSC at page 14 of the judgment stated thus:- ***"Accordingly we hold that an accused person must be given and afforded opportunities and means so that the prosecution does not gain an unfair advantage so that the accused is not impeded in any manner and does not suffer disadvantage in preparing his defence, confronting his accusers and arming himself in defence, so that no miscarriage of justice is occasioned. Non-disclosure is a potent source of injustice as it is often difficult to say whether an undisclosed***

item of evidence might have shifted the balance or opened up a new line of defence."

From my careful reading of the judgments in the *Issa cases*, I am unable to agree with the Prosecution that both the Court of Appeal and Supreme Court in the said cases stated emphatically that a charge drafted without those material particulars as in the instant case, will be sufficient to meet the constitutional and statutory requirements of fair trial.

(72) Consequently, it is my view that the majority of the Learned Justices of the Court of the Appeal did not err when they held in the instant case that the Court of Appeal and Supreme Court in the *Issa cases* could not have determined what the particulars of offence should be in every charge under Section 179A (3)(a) of the criminal and other offences Act. As they rightly stated, in each case of a charge under Section 179A (3)(a) of causing financial loss to the state, the nature of the particulars of offence will have to be determined based on the peculiar facts and complexity of the case. The position of the law in the *Issa cases* pronounced nearly two decades ago cannot be said to wholly represent the current position of our criminal jurisprudence on the issue.

(73) In my considered view, the rules and accepted principles of law established by this court and given constitutional effect cannot be considered in the abstract and slavishly applied without proper attention to and adequate consideration placed on the peculiar facts of each case. The facts of each case are material and fundamental and must assume a crucial role in the process of adjudication. Consequently, I dare say that, the contention that the same material particulars were sufficient to meet the constitutional and statutory requirements in every case

in which there is a charge under Section 179A (3)(a) will in my opinion result in injustice to the detriment of a person charged for an offence whose innocence is constitutionally presumed.

(74) At the risk of being repetitive, it must be made clear that the Respondent has not been charged under the facts but under the charge sheet which includes the particulars of offence. Thus, although the facts of the case as narrated by the Prosecution may be quite illuminating for the accused, it does not absolve the Prosecution of its obligation to sufficiently and reasonably set out the particulars of offence in the charge sheet. Whether or not reasonable information has been

given an accused person in the particulars of offence is on a case-by-case basis. Each case will have to be examined within its own peculiar facts and circumstances. The particulars of offence should provide the basic facts which will have to be proved at the trial.

(75) From my examination of the record and the application of the relevant law, I do not find that a meritorious case has been made by the Prosecution to establish that the Court of Appeal misconstrued the import and purport of article 19(2) (d) of the 1992 constitution and section 112 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) *(as amended).* The appeal in my view fails for all the reasons hereinbefore set out, and I accordingly dismiss same. The judgment of the Court of Appeal dated 3rd April 2020 is hereby affirmed.

I.O. TANKO AMADU

(JUSTICE OF THE SUPREME COURT)

Y. APPAU

(JUSTICE OF THE SUPREME COURT)

A. M. A. DORDZIE (MRS.)

(JUSTICE OF THE SUPREME COURT)

A. LOVELACE-JOHNSON (MS.)

(JUSTICE OF THE SUPREME COURT)

G. TORKONOO (MRS.)

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