

IN THE CIRCUIT COURT OF JUSTICE HELD IN HO, VOLTA REGION  
ON WEDNESDAY THE 5<sup>TH</sup> DAY OF JULY, 2023 BEFORE HIS HONOUR  
MR. FELIX DATSOMOR, ESQUIRE, CIRCUIT COURT JUDGE

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COURT CASE NO. D21/10/2021

THE REPUBLIC

VRS

1. JANET KUMKAH
  2. JAPHET DZORKPUI
  3. PETER AZUMAH
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## J U D G M E N T

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This judgment is in respect of the third accused, Peter Azumah, who was charged with a count each of the offences of *abetment of crime* and *possession of forged document* contrary to sections 20(1) and 166 of the Criminal Offences Act, 1960 (Act 29).

He was alleged to have aided and abetted the first accused, Janet Kumkah, in the year 2019 to carry on insurance business without licence in Ho. He was also alleged to have had in his possession a Quality Insurance Company (QIC) sticker with serial number 4671090 in the year 2019 in Ho.

The complainant in this case who was the Regional Manager of National Insurance Commission (NIC), Ho. The first and second accused persons were middle men popularly known as *Goro Boys* or *Goro Girls* at the Driver and Vehicle Licensing Authority (DVLA) in Ho. The third accused is an insurance agent for QIC Limited, Ho branch,

located within the premises of the DVLA. In May 2019, the NIC received series of complaints that one Peter at DVLA, Ho was selling fake insurance stickers to unsuspected motorists within the Ho municipality. This usually led to the rejection of injury claims by Insurance Companies due to the fake nature of the insurance stickers and documents presented for the insurance claims. The police on 20 May 2019 therefore visited the third accused in his office and met the first and second accused persons in the said office. A search was conducted and one QIC sticker with serial number 4671090 issued to a vehicle with registration number GT 579-12 in 2017 was found on his table. In the first accused's handbag were found Donewell Insurance Company (DIC) stickers with different serial numbers concealed in a brown envelope with second accused's name and contact number written on the envelope. The accused persons were consequently arrested and upon interrogation, the first accused admitted the offence and disclosed that she had even sold a sticker to an innocent taxi driver at a cost of GHc100 before the police arrived. According to her, the said sale of the sticker was done with the assistance of the second and third accused persons. She further stated that it was the second accused who introduced her to one Donne, a resident of Accra, in 2018 to supply her with the said fake insurance stickers. She however failed to lead the police to the said supplier. The suspected fake insurance stickers retrieved that day were forwarded to the NIC in Accra for examination and report. On 27 May 2020, the examination report was received confirming the exhibits to be fake or not genuine. The report stated that those tickets were issued to various motorists in 2015 and were accounted for accordingly thereby implying that those retrieved were forged. Investigations revealed that the third accused who was an agent for QIC Limited has over the years been selling fake insurance stickers at lower prices to some motorists alongside the genuine ones issued by his company. The first and second accused persons who also sold fake stickers operated their illegal activities from the third accused's office. After investigations, the accused persons were charged with the offence and arraigned before this court to stand trial.

The first and second accused persons in the course of the pendency of this case changed their pleas and were consequently convicted on their respective pleas and sentenced. However the third accused maintained his plea of “not guilty” throughout the trial.

By his plea, the third accused person was presumed innocent until the contrary was proved by the prosecution beyond reasonable doubt. See: *Article 19(2) (c) of the Constitution, 1992*. It is trite learning that where the accused pleads not guilty to a charge, he is deemed to have put himself upon his trial. The effect of this plea is that he has joined issues with prosecution not only by the mere denial of the charge as framed, but also a denial of all the ingredients of the said offence, and that means the prosecution must lead evidence to prove every element of the offence charged. See the cases of *Philip Assibit Akpeena v. The Republic (2020) 163 G.M.J 32, CA* per Tanko Amadu, JA (as he then was) as well as *Osei Adjei & Another v. The Republic [2010-2012] 2 GLR 754 at 764*.

Whereas the prosecution carries the burden to prove the guilt of the third accused person beyond reasonable doubt, there is no such burden on him to prove his innocence. At best, all that the third accused person is required by law to do is to raise a doubt in the case of the prosecution. See *Bruce-Konuah v. The Republic [1967] GLR 611* and *Section 11(2) and (3) of NRCD 323*. Even that, it is only after the burden has shift onto him by reason of the nature of evidence adduced by the prosecution at the trial against him that the third accused will assume such a burden of raising reasonable doubt(s) in the case of the prosecution. This is primarily because there is a constitutional presumption of innocence already operating in his favour and that presumption is only rebutted when the prosecution establishes a *prima facie* case against the third accused person and he is called upon to open his defence to the charge laid. See *Philip Assibit Akpeena v. The Republic* supra per Dennis Adjei, JA.

The prosecution can only prove the guilt of the third accused beyond reasonable doubt if they proffer enough evidence to convince the Court that the third accused is guilty of the ingredients of the offence charged. This is the highest burden the law can impose and it is in contra distinction to the burden a plaintiff has in a civil case which is proof on a preponderance of the evidence. The prosecution is therefore expected to overcome all reasonable inferences favouring innocence of the accused. See *Richard Banousin v. The Republic (Criminal Appeal No. J3/2/2014 dated 18<sup>th</sup> March, 2015)*, reported in [2016] 94 GMJ 1.

At the trial, the prosecution called three witnesses to testify in support of its case against the third accused. The said witnesses comprised the complainant Bright Fiifi Agbenu, Detective Lance Corporal Emmanuel Ankomah and Detective Corporal James Kwasi Turkson. They testified as PWs 1, 2 and 3 respectively.

PW1 testified that the NIC had over the years received a series of complaints from some branch heads of the insurance companies regarding certain individuals believed to be engaged in the sale of fake insurance stickers to drivers within the Ho municipality. This had led to the rejection of injury claims by their outfit due to the fake nature of the stickers and insurance documents presented at the inception of the claim process. Consequently, he and the police, upon a tip off, visited the third accused person on 20 May 2019 at the premises of the DVLA, Ho. The third accused is said to be an agent of QIC Limited. The type of complaint that they received was that the first accused has been selling fake insurance stickers to motorists within the Ho municipality. When they got to the QIC Agency office, they met all the accused persons in the office. They interrogated them about the sale of the fake insurance stickers but they denied knowledge of it. The police then conducted a search and retrieved ten (10) pieces of DIC stickers in a booklet form from the first accused person's handbag. The said stickers were concealed in a brown

envelope with the second accused person's name and telephone number written on it. A number of the QIC stickers were retrieved from the third accused's table but only one with the serial number 4671090 was suspected to be fake. Upon further interrogation by the police, the accused persons admitted that the stickers retrieved from the first accused person were fake and that the first accused had even sold one of the fake stickers to a taxi driver that very morning at GHc100. The accused persons were accordingly arrested by the police together with the stickers and were sent to the Regional Police Headquarters for further action. In August 2019, the insurance stickers were sent to the NIC for examination. The NIC's checks with the DIC revealed that the stickers with serial numbers ranging from 4604551 to 4604600 were issued in October 2015 to the company's agent and were accounted for accordingly. DIC also confirmed that the stickers retrieved from the suspects were fake as the genuine ones were issued to motorists in 2015. The NIC after examination issued a report dated 22 May 2022 to the police stating that the insurance stickers so retrieved by the police were fake.

The record shows that the first and second accused persons did not have a permanent office at the DVLA, Ho premises but operated from third accused person's office. However, the third accused person denied knowledge of the sale of the fake insurance stickers notwithstanding that the first and second accused persons operated from his office. He insisted that all the QIC stickers retrieved from his table were genuine and that was what he was selling. The examination report indeed indicated that the QIC sticker with serial number 4671090 was fake.

In his defence, the third accused confirmed that he works as an agent of QIC Limited situated within the premises of the DVLA, Ho. He said he knows the first accused person as a staff of the DVLA whereas the second accused was a friend who used to come to his office and sit with the first accused person around his table. However, the third accused said he does not know that the first and second accused persons were dealers in fake

insurance stickers. According to him, he was not shown the said fake QIC sticker on the day of his arrest until after a year thereafter so he is unable to recall where the said sticker came from. He denied any such involvement in the sale of fake insurance stickers and stated that he could not have aided the first and second accused persons in their clandestine activities.

I must state for the records that having convicted and sentenced the first and second accused persons in respect of the insurance stickers with serial numbers 4604568 through to 4604576 and 4604582 which were DIC stickers, the said stickers will not be necessary for consideration in the determination of the fate of the third accused in this delivery. This is because none of those insurance stickers was retrieved from the third accused person. The evidence shows that they were retrieved from the first accused person's bag. It is only the QIC Limited sticker with serial number 4671090 which was retrieved from the third accused person that the court ought to examine in making that determination.

From the NIC report on the said insurance sticker with serial number 4671090 which is in evidence as Exhibit "J", it is found that the said sticker is fake because the company did not issue any policy on the vehicle number GT 579-12 for the period 5 March 2016 to 4 March 2017. Once the NIC has confirmed that it did not issue any policy in respect of the said vehicle number GT 579-12, then the question that arises is who issued the said fake insurance sticker? There is however no doubt about the fact that it was retrieved from the third accused when the police i.e. PWs 2 and 3 went together with PW1 to the office of the third accused. Therefore having been retrieved from him, I fail to see why he cannot be found guilty of possessing fake insurance sticker which is clearly a forged document. I am not persuaded in the least by the third accused person's defence that he knows nothing about the said sticker. Such defence is unacceptable and reasonably improbable to me. From the evidence on record, and on his own showing, the third accused cannot feign ignorance of the fact that the first and third accused persons were

dealers in fake insurance stickers since the second accused who was his friend usually came to his office and sat with the first accused around his own table. This finding presupposes that the third accused gave the first and second accused persons room to operate their illegal business by allowing them to use his office for that purpose. But unfortunately, the prosecution witnesses did not find or meet anybody buying any of the said fake insurance stickers from any of the accused persons at the third accused person's office that fateful day when they went there. If it were so, one would have found it pretty easy to establish the complicity of the third accused beyond reasonable doubt. But since that was not the case, it would be quite difficult for me to state for certain that the third accused indeed facilitated the sale of the fake insurance stickers by the second and third accused persons. This is because the admission made by the first and second accused persons were confessions and/or evidence against them only and not evidence against the third accused person whether he be implicated by it or not, unless it was made in the presence of the third accused person and he acknowledged the incriminating parts so as to make them, in effect, his own. See the case of *Francis Yirenkyi v. The Republic (Criminal Appeal No. J3/7/2015 delivered on 17<sup>th</sup> February, 2016, unreported)* as well as *Lawson v. The Republic (1977) 1 GLR 63*. I am therefore inclined to accept the testimony of the third accused that he did not know that the first and second accused persons were dealers in fake insurance stickers.

Thus, in the final analysis, whereas the third accused is, on the strength of the evidence adduced, found guilty of possessing forged document, he is however found not guilty of abetment of crime by way of aiding the first accused to carry on insurance business without licence. He is accordingly convicted only of Count 4 relating to the offence of possessing a forged document. He is sentenced to pay a fine of one hundred and fifty (150) penalty units or in default serve nine months imprisonment with hard labour.

(SGD)  
H/H FELIX DATSOMOR  
(CIRCUIT COURT JUDGE)  
05-07-2023

*INSPECTOR BENJAMIN AMOAKO APPEARS FOR PROSECUTION*

*3<sup>RD</sup> ACCUSED APPEARS IN PERSON*