

IN THE CIRCUIT COURT '3' HELD AT ACCRA SITTING ON TUESDAY THE 12TH DAY OF JUNE, 2023 A. D. BEFORE HER HONOUR SUSANA EDUFUL, CIRCUIT JUDGE

CASE NO. D2/72/21

REPUBLIC

VRS

- 1. BUKARI YAHAYA**
- 2. AWAL MURSOLU**
- 3. SURAKATU FUSEINI**
- 4. IDDRISU ISHAHAQ TANKO**

RULING ON SUBMISSION OF NO CASE TO ANSWER

The 1st and 2nd Accused Persons (A1 and A2) have been charged under Count 1 and Count 2 with the Offence of Conspiracy to commit robbery contrary to Sections 23 and 149 of the Criminal Offences Act, Act 29 of 1960 and robbery contrary to Section 149 of Act 29. The 3rd Accused has been charged under Count 3 with the offence of Abetment of crime to wit dishonestly receiving contrary to section 20 of Act 29. The 4th Accused has been charged under Count 4 with the offence of dishonestly receiving contrary to Section 146 of Act 29.

THE BRIEF FACTS

The brief facts presented by Prosecution are that "The Complainant Charles Odartey Mills is an Insurance Officer residing at Nungua Borabora whilst the 1st Accused Person Bukari Yahaya is

unemployed and lives at Agbogbloshie. The 2nd Accused Person Awal Mursolu is unemployed residing at Kpandai. The 3rd Accused Person Iddriss Ishahaq Tanko is a student and also lives at Kpandai but schools in Tamale Training College and the 4th Accused Person Surakutu Fuseini is a farmer residing at Kpandai in the Northern Region. On the 9th of January 2020 at about 2:00am, the 1st and 2nd Accused Persons scaled the wall of the Complainant, broke into his main hall and robbed him, his wife and children of their 32 inches Syinix television, 32 inches Nasco television, two laptops, two Samsung tablets mobile phones, one Techno Pouvour 3 mobile phone, cash the sum of GH¢5,000.00 and a Toyota Corolla vehicle with registration number GW 2417-15 at gun point. The Complainant lodged a complaint to the Nungua Police where investigations was commenced into the case. On the 4th of June 2020, the 1st Accused Person was arrested at his hideout at Agbogbloshie. Investigations revealed that after the robbery, the 1st Accused Person inserted his MTN sim card number 0546800214 into the Complainant's Techno Pourvour 3 mobile phone with IMEI numbers 352659104839380 and 352659104839391, travelled with the 2nd Accused Person to Kpandai in the Northern Region and handed over the said phone and other items they robbed from the Complainant to the 3rd Accused Person to facilitate the sales of the items. 3rd Accused Person after failing to get a buyer for the said phone handed it over to the 2nd Accused Person who then sold it to the 4th Accused Person at the cost of GH¢400.00. Police tracked the Complainant's phone to Kpandai in the Northern Region where the

2nd Accused Person was arrested. After the arrest of the 2nd Accused Person, he stated that the said mobile phone was given to him by the 1st Accused Person through the 3rd Accused Person to be sold to the 4th Accused Person. The 4th Accused Person who was then using the phone in Tamale was lured to Kpandai and was also arrested and the exhibit phone was retrieved from him. He admitted the offence and stated that he bought the said phone from the 2nd Accused Person at the above stated amount. The 3rd and 4th Accused Persons went into hiding but were arrested on the 29th of March 2022 during the course of investigations from the hideout at Kpandai. Efforts are still being made to retrieve the vehicle and the other items. The Accused Persons were however charged with the offences and brought before the court.

All Accused Persons pleaded not guilty to the offence charged.

THE STANDARD AND BURDEN OF PROOF

The settled position of the law as espoused in several authorities decided by the Ghanaian Courts is that at the close of Prosecution's case, a prima facie case ought to have been established. **MALI V. THE STATE** [1965] GLR 710; **THE STATE V. SOWAH** [1961] 2 GLR 745; **MOSHIE V. THE REPUBLIC** [1977] 1 GLR 258; **APALOO v.**

THE REPUBLIC [1975] 1 GLR 156; **ALI KASSENA V. THE STATE** [1962] 1 GLR 144 and recent cases such as **TSATSU TSIKATA V. THE REPUBLIC** [2003-2005] 2GLR 294.

In the case of **MICHAEL ASAMOAH & ANOR v. THE REPUBLIC** Suit No. J3/4/17 dated 26th

July, 2017, where the Supreme Court speaking per Adinyira JSC stated the law thus:

“Furthermore, the standard of proof borne by the Prosecution at this stage **cannot be proof beyond a reasonable doubt**, as held in the case of **Tsatsu Tsikata v. The Republic** [2003-2004] SCGLR 1068.”

From the law stated above, it is clear that even without the prompting of the Accused Persons, this court is obliged by law to consider, at the close of Prosecution’s case, whether sufficient evidence has been offered to prove every essential element in the offence charged.

To determine whether or not a case has sufficiently been made by the Prosecution to justify this court to invite the Accused Persons to open their defence, it is necessary to set out the scope of burden that is cast on the Prosecution to discharge at this stage. That is to say, whether the Prosecution has been able to establish a prima facie case against the Accused Persons in respect of each of the offences charged.

Referencing from the Ruling of the High Court in the case of **THE REPUBLIC v. EUGENE BAFFOE-BONNIE & 4ORS** Suit No. CR/904/2017 dated 23rd May, 2019, what will necessitate a discharge and an acquittal of the Accused Persons at this stage is when the following are present;

1. That there has not been sufficient evidence to prove the essential elements in the offence charged.
2. That the evidence adduced by the Prosecution had been so discredited as a result of cross examination that no reasonable tribunal could rely on that evidence.

3. That the evidence offered by the Prosecution is so manifestly unreliable that no reasonable tribunal could safely convict upon it.
4. That the evidence is evenly balanced, that is to say, the evidence is susceptible to two likely explanations – one consistent with guilt, the other consistent with innocence.

Section 173 of ACT 30, states that, if at the close of the evidence in support of the charge, it appears to the court that a case is not made out against the Accused sufficiently to require him to make a defense, the court shall, as to that particular charge acquit him. This court is obliged by law to consider at the close of Prosecution's case, whether sufficient evidence has been offered to prove every essential element in the offence charged. In this case, the duty of the Prosecution is to establish a prima facie case against the Accused Persons. In the case

of **Yeboah and Another v The Republic [1999-2000] 1 GLR 149** where the Court of Appeal speaking per GBADEGBE J stated that "*...a prima facie case was made against the appellants which required the trial circuit tribunal to call upon them to enter into their defense. The authorities are quite well settled that where at the end of the case for the prosecution, an ingredient of the offence charged was not proved or where the evidence of the prosecution was discredited as a result of cross-examination, thus rendering it unsafe to be acted upon, then the court need not call upon the accused to open their defense.*"

INGREDIENTS OF THE OFFENCES:

For the first (1st) count of conspiracy to succeed against the Accused Persons A1 and A2 (1st and 2nd Accused Persons) as spelt out under section 23 of Act 29, the Prosecution must prove:

- i. That the Accused Persons agreed together to commit robbery or
- ii. That the Accused Persons acted together with a common purpose to commit robbery.

COMMISSIONER OF POLICE v AFARI [1962] 1GLR 483

For the charge of robbery to succeed the Prosecution must prove the following ingredients of the offence:

- (a) that there was stealing
- (b) that force or threat of harm was used
- (c) that force or criminal assault or threat of criminal assault was used with intent to prevent or overcome the resistance of anybody to the stealing
- (d) the identity of the Accused Persons.

See the case of **MENUH & DADE v REGINA [1957] 3 WLR**

The 3rd Accused has been charged with the offence of abetment of crime to wit dishonestly receiving. **Under section 20 (1) of Act 29/60** , "every

person who, directly or indirectly, instigates, commands, counsels, procures, solicits, or in any manner purposely aids, facilitates, encourages or promotes, whether by his act or presence or otherwise and every person who does any act for the purpose of aiding, facilitating, encouraging, or promoting the commission of a crime by any other person, whether known or unknown, certain or uncertain, is guilty of abetting that crime, and of abetting the other person in respect of that crime". Prosecution would have to prove that the Accused Person did an act to purposely aid or facilitate the unlawful entry and stealing which took place.

For the charge of dishonestly receiving to succeed under count four against 4th Accused (A4) Prosecution must prove that:

- a. that A4 received goods
- b. that the items they received were stolen
- c. that A4 knew or ought to have known that the items were obtained through stealing
- d. that the act of receipt by A4 was dishonest

See the case of **NYINA v COMMISSIONER OF POLICE** [1964] GLR With the two counts being inchoate offences the Prosecution must prove the ingredients of the substantive offence of robbery and dishonest receiving:

THE EVIDENCE OF PROSECUTION:

Prosecution called three Witnesses.

PW1'S EVIDENCE

PW1 was Priscilla Naa Lamiley Mills. She lives at Bora Bora in Nungua Accra. The Complainant is her father. PW1 lives with her family in the house where the crime occurred. According to PW1, on January 2020 on or about 2:25am she woke up and was sending messages on her phone. She heard a noise on their main door. PW1 then decided to check what it was. PW1 saw one of the armed men and so began to shout for help and raise alarm. She heard a gunshot, and so PW1 decided to run out of her room she met her father on the way but bypass him to meet her mother in her room. PW1 further stated that there were 3 men who had come to their house the two were in mask and the one other was not in mask. The men ordered all persons in the house to surrender their phones and monies and made every one of them lie on the floor. PW1 decided to push the iphone she was holding under the bed and when the men requested for her phone she gave them a different one. PW1 heard noise in her room and other places in the house. The robber collected the keys to their Toyota Corolla and then locked them up in one room and then they left the house. PW1 used her phone to call for help and eventually called the police with the help of some of her colleagues. When the robbers left PW1 detected that the robbers had made away with her laptop and some of PW1's belongings, as well as her ID Cards, her office bag with a cash of GHC 1,000.00. Two television sets at the main hall were also taken away.

PW2'S EVIDENCE

PW2 was Florence Mills. According to her, she lives with her husband the Complainant at Nungua Accra and in the house where the incident happened. Her daughter is PW1 who lives with them in the same house. PW2 corroborated PW1's evidence.

PW3'S EVIDENCE

PW3 was Charles Odartey Mills, he is the Complainant herein. He lives at Bora Bora in Nungua Accra. PW1 Priscilla Naa Lamptey Mills is his daughter and PW2 is his wife. They all live together in the same house. According to PW3 on January 9, 2020 at around 2:45am his daughter PW1 whose room is next to his alerted him that some people were in their house. PW3 stated that he saw two of the men in mask while the 3rd one who did not wear any mask had a pistol in his hand. PW3 corroborated PW1's narration of the incident.

PW4'S EVIDENCE

PW4 was Detective Constable Noah Manu D. He is stationed at Kpeshie Divisional CID. According to PW4 this case was given to him to investigate and so he conducted his investigation into the matter. PW4 stated that he visited the scene of crime to ascertain the report made by the Complainant. At the Complainant's house, PW4 detected that the robbers climbed the fenced wall into the house and broke the Complainants main door and entered through the Hall. PW4 discovered empty shells from a fired weapon at the premises the photograph of this was attached in evidence. PW4 also saw that the

room had been ransacked. The key to a Hyundai was found planted in the soil close to the porch of the house so it was retrieved. A photograph exhibiting that the main door of Complainant's room damaged and the room ransacked was tendered in evidence. PW4 took a court order to know the user of the phones taken from Complainant's house. Information from MTN head office on the IMEI of the Complainant's phone indicated that 1st Accused sim card was in the phone in less than 24 hours after the robbery. PW4 obtained information details of the 1st Accused and sent it to the Electoral Commission for further information of the Accused which was received. The information led to the arrest of Accused at Agbogbloshie in Accra. An investigation caution statement and further statements were taken from 1st accused. 1st Accused admitted having used the phone to make calls on his way to Kpandai but denied being part of the said robbery. 1st Accused also admits that after buying the phone for his brother at Kpandai he inserted his own sim card into the phone. The 1st Accused initially indicated that he sold the phone to A3 who lives at Kpandai. 1st Accused told Police he bought the phone at Franko Trading Ltd. but later changed his statement and stated that he bought it at Tiptoe lane Accra. Investigations revealed that even though the phone was found with 4th Accused it had 2nd Accused as his DP. When 2nd Accused was arrested he told police that it was 1st Accused who brought the phone to Kpandai and instructed he 2nd Accused to get someone to buy the phone. It was the 4th Accused who showed interest in buying the phone but he had no money so the 1st Accused handed the phone to the 3rd Accused to hold and hand it to

A4 whenever he is ready to pay. A3 took the money and handed it over to 1st Accused and then released the phone to A4. Based on this information the 4th Accused was arrested on September 22, 2020. The 2nd Accused was questioned why he instructed A4 to switch off the phone? He indicated that he was instructed by A1 to do so when he was arrested. On March 30 2021, A3 was arrested at Kpandai and he indicated that he was present when A1 handed over the phone to A2 to be sold for him. He A3 did not have anything to do with their transaction. PW4 tendered the following exhibits;

1. Investigation Caution Statement dated 4/6/2020, labelled as exhibit 'A' and 'A1'
2. Investigation Caution Statement dated 8/6/2020, labelled as exhibit as 'B' and 'B1'
3. Investigation Caution Statement dated 28/9/2020, labelled as exhibit 'C'
4. Charge Statement of A1, label as exhibit 'D'
5. Awal (A2) Investigation Caution Statement and Charge Statement labelled as exhibit 'E', 'E1'
6. Charge Statement of Awal as exhibit 'F'
7. Surakatu Fuseini A3, Investigation Caution Statement dated 26/10/2020
Exhibit G
8. A3'S Investigation Caution Statement dated 1/4/2021 as exhibits 'H', 'H1'
9. Investigation Caution Statement dated 5/4/2021 as exhibit 'K'

10. Charge Statement of A3 as exhibit 'L' Iddrisu Tanko (A4)
11. Investigation Caution Statement dated 22/9/2020 as exhibit 'M'
12. Investigation Caution Statement dated 2/10/2020 as exhibits 'N',N1
13. Charge Statement of A4 as exhibit 'P'
14. Photograph of the crime scene labelled as exhibits 'Q', 'Q1'
– 'Q4'
15. Request information to Electoral Commission label as exhibit 'S'
16. Rely to request for Electoral Commission Attached is details of A1
As exhibit T
17. Court Order Label as exhibit 'U'
18. MTN call log label as exhibits 'V', 'V1' – 'V5'
19. Order for Disclosure to Electoral Commission Label as exhibit 'W'
20. Re – Electoral Commission dated 29/5/2020Label as exhibits 'X',
'X1' – 'X3'

EVALUATION OF THE EVIDENCE AND APPLICATION OF THE LAW:

PW1 and PW2 and PW3 recounted how they were attacked at gun point by three persons two of who wore face mask. By the threat of the use of force or harm or by the use of a gun, their properties and

other valuable of PW1, PW2 and PW3 were taken away from them. These items included, monies, phones, two television sets, hand bag, ID cards and other valuables.

By the provisions of section 150 of Act 29, if any harm is caused to any person or threat of criminal assault is used with the intent to overcome the resistance of the person in custody of the things for the purposes of stealing, the person commits robbery. The intention must be to dishonestly appropriate the property of another with the Accused not being the owner and must not also have a claim of right in that property. See P. K. Twumasi – Criminal Law in Ghana page 371.

The court finds that there was appropriation of properties being monies, phones, hand bags, ID cards, two sets of television and other belongings of the victims. The appropriation could not be said to be honest. Appropriation could be dishonest when the person doing that, does not have a claim of right over the property and when the person doing it is not the owner. See section 120 of Act 29. The court finds that all these elements of robbery are present here and Prosecution did indeed prove them at this stage.

Evidence led by prosecution are that the persons that came to the house had a gun and by the use of force and threat of harm they forced themselves into the Complainant's bedroom and took properties which belonged them. PW4 told the court that he found empty bullet shells from the house to show that the persons took the said items in the house with the use of treat of harm and the use of

force. Stealing accompanied by the use of any such incidence is robbery. I also hold and make a finding of fact that robbery took place on the day in question.

Prosecution also provided evidence to support that fact that the phone found with A4 were among the items taken from Complainant house on the day of the incidence. Prosecution tendered photographs of the scene after the items were taken from Complainants house.

Now to the last element of the identity of the Accused Persons and how they are linked to the crime. From the evidence led by Prosecution nobody identified A1 and A2 as the robbers by direct evidence. However, there are circumstantial evidence on record to link A1 and A2 to the robbery. That is, the Complainant's phone which was taken by the robbers was used to trace them. It turned out from the IMEI report that 1st Accused put his SIM card into the said phone and used the phone in question on his way to Kpandai.

The question then is if, 1st and 2nd Accused Persons were not part of those who robbed the Complainant, how did he come by the phone. A1 has indicated that he acquired it at tip toe lane. A2 has also been connected to the crime of robbery as A2 is the one whose picture appeared on the DP of the said phone which was in possession of A4. According to 2nd Accused in his Caution Statement he indicated that A1 brought the phone to Kpandai and indicated that he was selling and requested A2 to get him a buyer. A1 gave the phone to A3 who is A1's brother to be given to A2 whenever A2 got a buyer. A3 handed

the phone to A2 who sold it to A4 at about GHC400.00 the amount was handed over to A3. From the evidence on record the court finds that A1 and A2 had possession of the phone in issue at various points during the period the phone was taken from the Complainants house. There are triable issues established at this stage by Prosecution and there is the need for Accused to provide answers to raise a doubt in the mind of the court. The court finds that Prosecution has been able to establish the elements of the offence as well as link A1 and A2 to the incident of robbery because they possessed an item taken from the premises of Complainant. The burden placed on Prosecution at this stage is discharged. The burden is cast on Accused Persons to raise a doubt and therefore they were granted the opportunity to give their defence to the offence charged as Prosecution has made a prima facie case against A1 and A2.

Accused Persons, A1 and A2 are also charged with conspiracy. In the case of **THE REPUBLIC v MAIKANKAN** [1972] 2GLR 502 the court held:

'for a charge of conspiracy to succeed under section 23 of Act 29 there must be evidence that the accused persons agreed or acted together with a common purpose to commit the offence'

Evidence led by persons acting together in furtherance of a criminal objective is enough to establish conspiracy without necessarily proving the agreement to act together.

The court has noted in the case of **ADU BOAHENE v. REPUBLIC**

[1972] 1GLR 70 that:

'...there can be no better proof of the identity of an accused than the evidence of a witness who swears to have seen the accused committing the offence charged'.

Prosecution's evidence is that Accused Persons, A1, A2 and one other entered the premises of the PW3 the Complainant, held persons in hostage and robbed them of valuable items. The Prosecution Witnesses were unable to identify the 3 persons who were in the Complainant's house to commit the robbery.

From Prosecution's evidence, A1 and A2 have not been directly identified as having gone to the Complainants house. They are however linked to the robbery as A1 is found to have possessed the phone in issue. A1 admitted possessing the said phone on his way to Kpandai. A2's photograph was also found on the phone in issue. A2's evidence on record is that he Assisted A1 with the sale of the phone. A2 has not assigned any reason why his photo ended up on the DP of the said phone. The court presumes A2 had the said phone in issue in his possession that is why he was able to use it to snap his photo and place on the DP.

According to A2 in his Caution Statement he played a role in disposing of the phone and not in the robbery. The evidence on record establishes the elements of conspiracy to commit crime to wit, robbery and A1 and A2 have been linked to the offence charged. The Prosecution established that both Accused Persons held and possessed the same phone at a point in time after the incident of

robbery at the Complainants house. The burden cast on Prosecution at this stage is discharged per the evidence on record. The Accused Persons are called upon to open their defence.

On count three, the charge of abetment of the crime of dishonest receiving against A3, he has pleaded not guilty.

For the charge of abetment to succeed against A3, Prosecution must prove any of the incidents listed in **Section 20 of Act 29** that is that A3 did any of the following towards the commission of dishonest receiving – directly or indirectly aided, facilitated, encouraged, promoted, instigated, commanded, counseled, procured or solicited the commission of stealing. In other words, prosecution has to prove that A3 abetted A4 to commit the offence of dishonestly receiving.

See Outline of Criminal Law, 17th Ed. pp 97 – 107 by Prof. Kenny.

What evidence did Prosecution show that A3 did towards the commission of dishonest receiving as one cannot be charged with abetment under Ghanaian law in terms of being an accessory after the act. Prosecution's evidence is that A3 is A1's brother. A1 left the phone in issue with A3 who is his brother and tasked A2 to get him a buyer to purchase his phone. A2 got A4 who was interested to purchase the phone and so A2 took the phone from A3 and handed it to A4. A4 paid the amount of GHC400.00 to A2 and same was handed over to A3 to hold for A1. The evidence on record shows that A3 aided and facilitated the incidents for the commission of dishonestly receiving by A4. Prosecution's evidence is that A3 possessed the phone which was handed over to A4 in exchange for

an amount of GHC400.00 which is the proceeds of the sale of the phone. The court finds that the Prosecution has made a prima facie case on this charge A3 is therefore called upon to open his defence.

Counts four, A4 has been charged with the offence of dishonestly receiving goods stolen by way of robbery under section 146.

Prosecution per the evidence has indicated that they retrieved the phone in issue from A4. According to Prosecution, A4 bought the phone Tecno Pouvoir 3 mobile phone valued at GHC900.00 and paid 400.00 to A2 for it.

But did the two know or ought to have known that the items they received from the convict were the products of crime? Knowledge is very crucial in this offence and in that respect the court will have to look at the circumstances before, during and after receipt of the goods to determine whether he knew or ought to have known that the goods were products of robbery.

Are there any evidence on record to that effect he knew or ought to have known that the phone was appropriated through the act of robbery and the act of dishonesty? The court is of the opinion that A4 did not buy the phone from any sales point and the price he bought the phone ought to put him on enquiry. A4 had this notice and if A4 went ahead to buy it, then that was dishonest. The explanation of A4 is crucial. A4 is therefore called upon to open his defence if the court finds that there are triable issues for determination at this stage. The Prosecution has made a prima facie

case against A4

Under section 173 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30), “where at the close of the evidence in support of the charge, it appears to the court that a case is not made out against the Accused sufficiently to require the Accused to make a defence, the Court shall, as to that particular charge, acquit the Accused.”

Having applied the principles to the case before me and having regard to the evidence on record, it is my opinion that the Prosecution has been able to establish a prima facie case against all Accused in respect of the charges stated in count 1 to count 4. They are therefore called upon to open their defence.

PROSECUTOR

CHIEF INSPECTOR CHRISTINE BANSAH

LEGAL REPRESENTATION

ABULAIS YARO HARUNA FOR A2

STEPEHN DUODOO FOR A1 AND A3

SGD.

H/H SUSANA EDUFUL (MRS)

(CIRCUIT JUDGE)