CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON TUESDAY, 4TH JULY, 2023

SUIT NO. D1/14/19

THE REPUBLIC

VRS

BEN OGRAH

CARL KUMORDZI

SOLOMON NANA YAW AMOAKO

JUDGMENT

All three accused persons were arraigned before this court on the 20th of May, 2019 on two charges; conspiracy to steal contrary ***to section 23 (1) and 124(1) of the Criminal Offences Act, 1960 (Act 29)*** and stealing contrary to ***section 124(1) of the Act.***

The particulars of offence for count one are that on the 4th day of February, 2019 at about 09:00 am at CMA CGM Ghana located at Meridian Area in the Tema Circuit and within the jurisdiction of the Court, they agreed and acted together with common purpose to commit the crime of stealing.

The particulars of offence for count two are that on the even date, time and place, they dishonestly appropriated fourteen containers of twenty feeter all valued at Ghs 138,845.68, the property of CMA CGM.

Their pleas were retaken on the 17th day of February, 2020 in the presence of their counsel and in their preferred language of twi, they all pleaded not guilty to both count one and count two.

The accused persons, per their plea of not guilty, stood shielded by the law as per ***Article 19 (2) (c) of the 1992 Constitution***, they are presumed innocent until proven guilty. According to the case of ***Davis v. U.S. 160 U.S 469(1895)*** "Upon that plea the accused may stand, shielded by the presumption of his innocence, until it appears that he is guilty; and his guilt cannot in the very nature of things be regarded as proved, if the jury entertain a reasonable doubt from the evidence".

They had also by the same plea put in issue all the relevant elements necessary to establish the offence they have been charged with. In the case of ***Domena v. Commissioner of Police [1964] GLR 563 the Supreme Court per Ollenu JSC*** (as he then was) commented on the burden and standard of proof as such: "Our law is that by bringing a person before the court on a criminal charge, the prosecution takes upon themselves the onus of proving all the elements which constitutes the offence to establish the guilt of the defendant beyond reasonable doubt, and that onus never shifts. There is no onus upon an accused person. Except in special cases where the statute creating the offence so provides…"

In the case of ***Richard Banousin v. The Republic, Criminal Appeal No. J3/2/2014 delivered on 18TH March, 2014,*** The Supreme Court per Dotse JSC noted that "the prosecution has the burden to provide evidence to satisfy all the elements of the offence charged".

That being so, prosecution may lead credible and positive evidence to upset that presumption. A court thus commences a criminal trial where an accused has pleaded not guilty on the rebuttable presumption that the accused person is innocent until proven guilty.

The onus lies on prosecution to lead evidence to establish a prima facie case against the accused persons by the close of their case. It is only then, that prosecution would be deemed, prima facie to have upset the presumption of innocence in favour of the accused and he would in turn be called upon not to prove his innocence, but to raise a reasonable doubt as to his guilt. Where prosecution fails to establish such a prima facie case, the court must acquit and discharge the accused person.

Prosecution in proof of its case called four witnesses.

THE EVIDENCE OF PW1

PW1's evidence is that she works for CMA CGM. That on the 4th day of February, 2019, she received a shipping order from Inter Cargo services for fifteen 20 footer containers for the purposes of exporting cashew nuts from Tema Port to Shanghai in China.

The name of the person who was to collect the containers was John Mensah. She released the containers to the said John Mensah on the same day. He failed to return them and after contacting him, he told her that he could not see his exporter client. John Mensah was able to return only one container.

THE EVIDENCE OF PW2

PW2 is John Mensah. His evidence is that he knows A2 very well as they used to work together as clearing agents in Tema. In January, 2019, A2 contacted him that he needed fifteen empty containers for a client who was shipping casher nuts from Ghana. A2 told him that he had once worked in the warehouse of the said client.

That A2 called the said client on phone and he (PW2) personally spoke to him to confirm. That client was A1. Although A2 requested twenty containers, he agreed to give him fifteen containers. That he asked A2 to inspect A1's warehouse but A2 said that he lived in the same area with A1.

On the 29th of January, 2019, A2 contacted him that the request was urgent and so the two of them went to Inter Cargo services at Community 4. That he contacted one Janet who assured him that the containers would be ready anytime he needed same. That Carl Kumordzi confirmed in the presence of Janet that he had visited the client's warehouse and seen the cashew nuts.

That he contacted Janet on 4th February, 2019 and she put in the request for containers after which the containers were released to him. A2 then led the trucks with the containers to the warehouse. The warehouse was closed at the time. That A1 spoke to him on phone and asked him to leave the containers and return the next day for the cost of transportation.

He went to the warehouse the next day around 4:00pm and saw only one container out of the fifteen. His enquiries from people around led to information that on the same day as the containers were delivered, A1 and A2 brought trucks in the night to cart them away. Also that the warehouse belonged to Font Tissue and not to A1.

He continued that A2 began to play hide and seek with him. When he visited A2's place of abode at Nungua, he learnt that A2 had relocated to an unknown place. That he and CMA officials reported to the police.

Again that he went to so many places in search of the containers and spotted one of them at Tema Community 11. That he alerted the police and they went for same and arrested A3 at community 5.

Under cross examination by counsel for the accused persons, EXHIBIT 1 and 2 were tendered through him.

EVIDENCE OF PW3

PW3 is Janet Kushiator. Her evidence is that sometime in first week of February, 2019, PW2 and A2 contacted her to put in a request for fifteen 20 footer containers. According to them, it was for the export of cashew nuts by their client.

She put in the request and gave the name of the person who would collect the containers as PW2. The containers were released to PW2 and she later got to know from PW2 that A2 and the exporter have run away with the containers.

THE EVIDENCE OF PW4

PW4 is the investigator. His evidence is that in the course of investigations, they found one of the stolen containers at community 11. It had been cut and converted into a shop. Enquiries from the occupant led to the arrest of A3. This is because the woman indicated that she purchased the container from A3 at a cost of Ghs 6,000 and had made part payment. She was thus made to call A3 and set up a meeting for him to receive the balance of the price of the container and it was when he showed up that he was arrested.

Upon his arrest, A3 said he had the container from A1 and A2. He then led police to A1's house at Madina and he was arrested. A1 also led police to A2's house at Oyibi

and he was arrested. That A1 and A3 led police to recover one of the containers that he had kept in a bush to store his bags of cement. A2 and A3 also led police to Sakumono to retrieve one of the stolen containers.

PW3 continued that per their investigations, the three accused persons are friends. That they conspired to steal empty containers and sell same in order to make money. That in furtherance of that plot, A2 who was once a clearing agent convinced PW2 to get him fifteen containers from CMA CGM under the guise of the containers being required for export by A1. That A1 is not an exporter.

That after obtaining the containers, the accused persons kept them in hidden places like Madina, Adenta and Pantang before selling them. That A2 and A3 then relocated from Nungua to hide in an uncompleted building in a bush in Oyibi.

Prosecution tendered in evidence the investigation caution and charge statements of all the accused persons which were marked as EXHIBIT A and A1, B and B1 and C and C1. He also tendered in evidence EXHIBIT D.

Prosecution closed its case after this.

CONSIDERATION BY COURT

Section 173 of the Criminal Procedure and Other Offences Procedure Code, 1960 (Act 30) provides 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 defence, the Court shall, as to that particular charge, acquit him."

Thus a court is under a duty at the close of prosecution's case, to find out whether from the evidence on record, prosecution has established a case sufficiently against and accused person that requires him to answer. In deciding whether or not a case is made

out against the accused sufficiently to require him to make a defence, the Court must make these considerations.

The first is whether prosecution has led evidence to establish all the requisite elements of the offence. Secondly, whether the evidence has not been so discredited under cross examination, thirdly, whether the evidence is reliable and the court can safely convict on it if the accused person exercises his constitutional right of silence when called upon to open his case and finally, that the evidence on record does not lend itself to two interpretations; one of guilt and one of innocence. Where the evidence is evenly balanced and susceptible to a construction of guilt on one hand and of innocence on the other hand, then the court must arrive at a conclusion that the accused person has no case to answer and thus proceed to acquit and discharge him. See the cases ***Apaloo and Others v. The Republic [1975] 1 GLR 156****) Gyabaah v. The Republic [1984-86] 461 C.A and* ***Tsatsu Tsikata v. The Republic [2003-2004] SCGLR 1068****).*

On count one, the applicable sections of the ***Criminal Offences Act, 1960 (Act 29) are sections 23 (1) and 124 (1)***. Prosecution must lead credible evidence to establish that the accused persons agreed to act together with a common purpose of stealing the fourteen containers belonging to CMA CGM Ghana on the date contained in the charge sheet.

The Criminal Offences Act, 1960 (Act 29) is section 23 (1). It provides that "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 a previous concert or deliberation, each of them commits a conspiracy to commit or abet the criminal offence.

In the case of ***Agyapong v. The Republic [2013-2015] 2 GLR 518,*** the court of Appeal noted that "under the old formulation of ***section 23(1) of Act, 29***, the prosecution needed to prove only one of two things. One was that the accused persons agreed to act together in

furtherance of the commission of the offence and the other was that even without agreeing to act together, they acted together in furtherance of the crime. But under the new formulation, the prosecution had a duty to prove that there was a prior agreement by the accused persons to act together with a common purpose, before it could secure a conviction for conspiracy''. See also the decision of Marful Sau J.A (as he then was) sitting as an additional High Court Judge in the case of **Republic v. Augustina Abu and others, (Unreported) Criminal Case No. ACC/15/2013**

In ***Commissioner of Police v. Afari and Addo [1962] 1 GLR 483***, it was held by Azu Crabbe JSC that "it is rare in conspiracy cases for there to be direct evidence of the agreement which is the gist of the crime. This usually has to be proved by evidence of subsequent acts, done in concert, and so indicating a previous agreement."

The reverent Torkornoo JSC, in reading the decision of the Supreme Court in the case of ***Asiamah v. Republic (J3 6 of 2020) [2020] GHASC 64*** (04 November 2020) held that ''The elements of conspiracy as just stated were outlined in ***Republic v. Baffoe Bonnie and 6 Others (Suit No. CR/904/2017) (unreported) dated 12 May 2020 by Kyei Baffour JA*** sitting as an additional justice of the High court in these words:

'For prosecution to be deemed to have established a prima facie case, the evidence led without more, should prove that:

1. That there were at least two or more persons
2. That there was an agreement to act together
3. That sole purpose for the agreement to act together was for a criminal enterprise.

The Supreme Court, through Appau JSC, stated in the case of ***Akilu v. The Republic [2017-2018] SCGLR 444 at 451***: The double- edged definition of conspiracy arises from the undeniable fact that it is almost always difficult if not impossible, to prove previous

agreement or concert in conspiracy cases. Conspiracy could therefore be inferred from the mere act of having taken part in the crime where the crime was actually committed. *Where the conspiracy charge is hinged on an alleged acting together or in concert, the prosecution is tasked with the duty to prove or establish the role each of the alleged conspirators played in accomplishing'' (emphasis mine).*

In order for prosecution to establish its case against the accused persons on count one, they must lead positive, cogent and credible evidence to establish that;

1. The three accused persons agreed to act together
2. The agreement to act together was for the common purpose of undertaking the criminal enterprise of stealing fourteen containers belonging to CMA CGM.

The definition section of the offence of stealing is ***Section 125*** and it provides that a person steals if he dishonestly appropriates a thing of which he is not the owner. The essential elements that prosecution has to prove to establish their case are;

1. that the accused persons are not the owners of the fourteen twenty feeter containers allegedly stolen
2. that the accused persons appropriated the fourteen containers of complainant company
3. that the appropriation was dishonest.

In order to prove the second element of appropriation, prosecution must go to ***section 122 (2) of Act 29***. According to the section "An appropriation of a thing in any other case means any moving, taking, obtaining, carrying away, or dealing with a thing, with the intent that some person may be deprived of the benefit of his ownership, or of the benefit of his right or interest in the thing, or in its value or proceeds, or any part thereof''.

The third and final element that prosecution must prove is that the accused persons appropriated the containers with a dishonest intention. Thus it is explained in ***section 120 (1) of Act 29*** that an appropriation of a thing could be deemed to be dishonest if it is proved that the appropriation was made:

(i) with intent to defraud; or

(ii) by a person without any claim of right; and

(iii) with a knowledge or belief that the appropriation was without the consent of some person for whom he was a trustee or who was the owner of the property appropriated;

I would consider both count one and count two together. Prosecution's case via their evidence in chief and answers under cross examination is that the three accused persons are friends. That they agreed to act together for the purpose of stealing containers. In furtherance of their plans, A2 contacted PW2 and made him to believe that an exporter wanted containers to export cashew nuts and needed his assistance to order the containers. PW2 agreed and A2 put him in contact with A1.

That A1 by the use of the name Benjamin Duke Agyeman confirmed that he was the exporter and provided his company details to PW2. A1 also confirmed to PW2 that A2 indeed had cashew nuts in stock at his warehouse at Spintex and that he lived in the same neighbourhood with A1.

PW1 became convinced and together with A2 obtained 15 containers from C.MA C.G.M; the complainants herein and delivered same to the said warehouse at Spintex.

That same evening, accused persons obtained trucks and carted 14 out of the 15 containers away. They hid them in places including bushes in Pantang, Adenta and Madina.

That accused persons sold the containers to various people many of whom reconstructed them into shops. One of the said containers was spotted at Community 11 by PW2 and the occupant mentioned A3 as her vendor. Investigations led to the arrest of A3 who in turn led police to arrest A1 and A1 led police to arrest A2.

Prosecution witnesses, particularly PW2 and PW4 held their own under cross examination and provided further details of the involvement of all the accused persons in the commission of the offence. I found them to be credible witnesses who had testified with first hand knowledge of events and had provided further details of their knowledge in this case under cross examination.

All prosecution witnesses had answered questions directly without being too vituperative and/or evasive. Their demeanor was that of persons who were speaking the truth as to what they knew. PW4 the investigator, had not conducted an arm chair investigation but had gone to the field during investigations which had led to the retrieval of six of the containers.

PW2 underwent a rigorous and lengthy cross examination by counsel for the accused persons. His evidence did not waver under cross examination and he had provided further details as to the involvement of A1 in the commission of the offence. Under cross examination, he had testified that A1 presented himself as Benjamin Duke Boateng whilst communicating with him and upon his request, A1 had provided documents of his company that was to export the products.

That A1 had sent one of his errand boys to hand him Ghs 5,000 on the day that the containers were delivered to his supposed warehouse. That the said money was part payment of the cost of transporting the containers to the said warehouse. That all the telephone numbers he had hitherto been communicating with A1 on could not be reached after the offence.

That police arrested the said errand boy and he pointed out A1 as the one who had sent him. That clearly, A1 had been using a different name and different numbers all in furtherance of his aim to commit this offence.

PW4 also testified of all the places that A1 had led them to after his arrest for the recovery of some of the stolen containers. A2 and A3 had also led him to recover one container which they had sold to someone.

At the close of prosecution's case, I determined that they had established that the accused persons agreed to act together towards a common criminal enterprise. Thus prosecution had established that accused persons conspired to steal the containers of complainant.

On count two, prosecution established that the accused persons were not the owners of the 14 containers. The owners of those containers were CMA CGM. Also that the accused persons had obtained the said containers by a false representation and proceeded to move it away to hidden locations in Accra. That some of these locations were in the bush. Prosecution established that the purpose of the appropriation was to deny the owners of their ownership of same.

Finally, I find that prosecution has established that the accused persons did so with an intent to defraud and without a claim of right. They had only been able to obtain the containers by a false misrepresentation and had proceeded to sell same to various people almost immediately. By so doing, they had obtained a benefit at the expense of the owners of the containers; C.M.A C.G.M and deprived the owners of their interest in the said containers as well as the pecuniary benefit in the containers.

At the close of prosecution's case, I found that prosecution had led evidence to prima facie establish all the elements of the offence of conspiracy to steal and stealing against the accused person. Abban J (as he then was) in ***Ampah v. The Republic*** **[1977] 2 GLR 171-179** held that: "If these three essential elements are proved to the satisfaction of the court, the court will be bound to convict unless the accused is able to put forward some defence or explanation which 'can cast a reasonable doubt' on the case for the prosecution."

Accused persons were thus called upon to open their case if they so desired.

DEFENCE

An accused person when called upon to open his defence does not have a duty to prove his innocence. His only duty if at all at this stage, is to raise a reasonable doubt in the mind of the court concerning the prima facie case established against him by the prosecution. See the dictum of Korsah CJ in the case of ***Commissioner of Police v. Antwi*** **(1961) GLR 408.**

If the accused person is able to raise a reasonable doubt in the mind of the court, he must be acquitted and discharged. See ***Bruce-Konuah v. The Republic [1967] GLR 611*** and ***Section 11(2) and (3) of NRCD 323***.

Denning J (as he then was) in the celebrated case of ***Miller v. Minister of Pensions [1947] 1 All ER 372 at 373*** held that. "The constitutional presumption of innocence of an accused person is that an accused is presumed to be innocent unless he pleads guilty or convicted by a court. The presumption is rebutted when the prosecution establishes a prima facie case against the accused person and the accused shall be called upon to raise a reasonable doubt as to his guilt." See also the dictum of Dennis Adjei JA in the Court of Appeal case of ***Philip Assibit Akpeena v. The Republic (2020) 163 G.M.J 32***

In arriving at whether an accused has raised a reasonable doubt, the court may either believe or accept the explanation given by the accused or find that although it disbelieves the explanation, it is reasonably probable. In both instances, the court must acquit and discharge the accused.

Thirdly, the court must consider the whole evidence on record and see if it raises any defence in favour of the accused. If quite apart from the defence's explanation, the court is satisfied on a consideration of the whole evidence that the accused is guilty, it must convict. See the case of ***Brempong II v. The Republic [1997-98] 1 GLR 467 and Tsatsu Tsikata v. The Republic [2003- 2004] SCGLR 1068.***

In A1's evidence in chief, he stated that, he purchased seven containers from one Duke Mensah at Spintex. That it was then that he met A2 and A3 for the first time. That A3 accompanied the delivery men to his house.

That prior to his arrest, the police had earlier retrieved two containers from his home. That the police have since his arrest, retrieved all the seven containers. That he is an illiterate and did not appreciate what he was made to thumbprint as his statement.

In A1's investigation caution statement, he said he knew A2 and A3 very well. That in the month of February, 2019, A3 called to tell him that A2 had some containers to sell. They met and A2 told him that the containers were not from a genuine source. He agreed to buy the containers at a cost of Ghs 3,000. For the fourteen containers, the total cost was Ghs 42,000.

That on the day A2 stole the containers from the company, they met at Spintex. That he gave Ghs 5,000 to one Baba Jamal to be given to A2 as part payment. That he later on in the evening carted all the 14 containers to Madina, Adenta and Pantang. He gave some to different men to keep and also sold some to people for as low as Ghs 2,800.

That both he and A3 sold one container each to one K and A2 also sold one of the containers. That he shared the proceeds of the sale with A2 and A3. A2 also forcibly retrieved one of the containers he had sold to a certain lady. That he personally sold seven of the containers whilst A2 and A3 sold six of them. Baba Jamal also sold one.

In his charge statement which is EXHIBIT A1, he said he purchased fourteen containers from A2 and A3 at a cost of Ghs 3,000 each and has since paid Ghs 15,000 to them.

THE EVIDENCE OF A2

In his evidence in chief, A2 stated that he does not know A1 or A3. That it was PW2 who was his former colleague who called to tell him that he had a job and he needed his assistance to execute same. That PW2 did everything and he only came in after the containers were released to assist PW2 to transport same to Spintex.

When they got to Spintex, PW2 went to speak to a certain man who was seated in a vehicle and came out with an envelope. They later dispersed upon the instructions of PW2. That he then travelled and returned only to be arrested by the police.

In A2's investigation caution statement, he said that he had never conspired with anyone to steal the containers. That A3 is his good friend and A3 informed him that a friend wanted to ship some cashew nuts and needed containers.

That he informed PW2 and PW2 was in constant communication with A1; the supposed exporter. However, when PW2 asked him to go and confirm if indeed the warehouse was in existence, he did not do so. That PW2 secured fifteen containers and he and PW2 sent them to spintex.

That although A1 was present at the scene, he did not meet PW2. A2 sent one Baba Jamal to give Ghs 5,000 to PW2 as the cost of transportation. A1 then loaded the containers to Adenta and Madina to sell same. A2 concluded by saying that he did not get any money from the stolen containers and it was A1 and A3 who were in constant communication.

In his charge statement, he stated that A1 informed him that he needed hundred 100 containers to import cashew nuts to Shanghai. That he would request for them in batches when he was ready. A2 says he in turn contacted PW2 who agreed to help. He also contacted A3 as he had introduced him to A1.

That PW2 delivered 15 containers to A1 at Spintex and the next day, A1 and A3 loaded 14 of the containers unto trucks and took them to Madina, Pantang and Adenta. That he

received Ghs 1,500 as his share of the sale of the containers. That he did not sell any containers to A1.

THE EVIDENCE IN CHIEF OF A3

According to A3, prior to his arrest, he neither knew A1 or A2. That he is a driver's mate. He and his master were engaged by two people on different occasions to cart containers to them at Sakumono and Community 11, Tema. That they did so by going to Adenta to pick the containers and then delivering same.

That the second person was not able to pay their fees and so upon the directions of his master, he had to return for payment. That he was arrested when he did this and even though he called his master, he never showed up. That he took the police to where he and his master had parked their vehicle but upon reaching there, neither the vehicle nor his boss could be seen.

In A3's investigation caution statement, he only purchased one container from A1 at a cost of Ghs 4,000 for a friend. That he inspected the containers in a bush at Madina prior to purchasing same.

In his charge statement, he said that both A1 and A2 are his friends. That A1 contacted him that he needed some containers for shipping and he in turn contacted A2 who is a clearing agent. He introduced the two of them. A2 later informed him that he had brought 15 containers to Spintex. In the night, he accompanied A1 and A2 to cart all the containers from Spintex to Accra.

That later, A1 told him that he was selling the containers. He (A3) sold two to a friend at a cost of Ghs 8,000 and shared the proceeds with A2. That A1 sold the remaining twelve (12) containers.

At the close of their case, I find that I do not believe the evidence of each of the accused persons. Each of them appeared to be lying through their teeth to this court. A voir dire had been conducted to establish the propriety of their investigation caution and charge statements and I determined that their statements were properly obtained in accordance with section 120 of the ***Evidence Act, 1975 (Act 323).***

The totality of their investigation caution and charge statements amount to a confession. It is trite that a confession statement when properly obtained constitutes evidence against the accused persons. In the case ***of Francis Arthur v. The Republic (Criminal Appeal No. J3/02.2020)*** *delivered by the Supreme Court on 8th December 2021,* ***Amegatcher JSC*** in reading the decision of the apex court quoted with approval the dictum of Akamba JSC in the case of ***Ekow Russell v. The Republic [2017-2018] SCGLR 469*** which is that.

"A confession is an acknowledgment in express words, by the accused in a criminal charge, of the truth of the main fact charged or of some essential part of it. By its nature, such statement if voluntarily given by an accused person himself, offers the most reliable piece of evidence upon which to convict the accused. It is for this reason that safeguards have been put in place to ensure that what is given as a confession is voluntary and of the accused person's own free will without any fear, intimidation, coercion, promises or favours''.

I determined the admissibility of accused person's confession statement and determined that same had been properly obtained. They were thus admitted into evidence. That being so, the confession of accused persons in their investigation caution statements and for A2 and A3, in their charge statements as well constitutes evidence against them as to the commission of this crime as well as the conspiracy to commit same.

In this court, their evidence is in stark contradiction to their confession statements. Indeed, for A1, his investigation caution statement, charge statement and evidence in chief are all different.

It is a legal known, that where an accused person gives evidence which conflicts his earlier statement, the court is bound to treat him with suspicion as to the veracity of his evidence.

In the case of **Odupong v Republic [1992-93] GBA 1038,** the Court of Appeal, coram Amuah, Brobbey JJA's as they were then, and Forster JA held on this principle as follows: ***"The law was well settled that a person whose evidence on oath was contradictory of a previous statement made by him, whether sworn or unsworn, was not worthy of credit and his evidence would be of no probative value unless he gave a reasonable explanation for the contradiction."*** *See also the* cases of **Gyabaah v Republic [1984-86] 2 GLR 416 and Kuo-den alias Sobti v Republic [1989-90] 2 GLR 203 SC.**

Accused persons had not provided any reasonable explanation for the variation in their statements. A1 had made a confession in his investigation caution statement and denied the offence in his charge statement. A3 had denied the offence in his investigation caution statement and made a confession in his charge statement. It is only A2 who had made a confession in both his investigation caution and charge statement.

Yet, accused persons, particularly A2 and A3 want the court to believe that they had been assaulted before their statements were obtained. As already indicated, I determined after a voir dire that their statements were properly obtained. They had not only confessed, but led the police to various persons and places for the retrieval of some of the containers. I find their explanation to be an afterthought.

I find accused persons not worthy of credibility. Apart from the fact that their statements and evidence are contradictory and thus of no probative value, I find that they had also taken pains to lie to this Court. I do not find their evidence to be reasonably probable.

Indeed, they had tried to outwit each other in this court as to who could tell the best lie. Whereas A1 claimed he did not know either A2 or A3 prior to his arrest by the police, A2 said he did not know A1 but knew A3 as a mate who worked at the harbor. A3 on his part said he knew A1 as a person whom he and his boss had upon the instructions of others, picked up two containers for transport from but he did not know A2 prior to this case.

A3 then proceeded to further expose his own lies by answering at page 137 of the record of proceedings, under cross examination by prosecution

Q: I put it to you that you know 1st accused as well as 2nd accused very well- prior to this case

A: My Lord, please I do not know them.

Q: You see, you further indicated in line 8 of exhibit C1 that ''during the month of January 2019 … Not so?

A: Please, it is never true. If Ben Ograh wants to transport cashew nuts, he knows a lot of people at the harbour to contact because he is an agent and he knows other agents. I am just a mate

The question that any reasonable man would ask is, if he did not know A1 prior to this case, how does he know him to be an agent?

All accused persons appear to be singing one song; since their names did not appear as the ones who had requested for the containers, they knew nothing about this crime. A2 had proceeded to say that it was PW2 who called him to assist him to execute a job. He was in this court when PW2 mounted the box and his counsel cross examined PW2. No such case was put across in the course of cross examining PW2. Again, PW3 was emphatic that it was A2 and PW2 who had come to her to request that she puts in the request for containers. I believe her.

The evidence of PW2 which I believe is that the accused persons knowing very well their criminal machinations, ensured that their names were not entered into the system. They did so by using John Mensah who for all intents and purposes was clueless as to the plan of the accused persons to secure a request and release of the containers.

The law is well settled that when an accused person decided to tell lies before a court, it is evidence of his guilty mind. I accept the principle in the case of **Munkaila v. The Republic [1995-96] 1 GLR 367**, In Which Aikins JSC reading the judgment of the court held that 'when an accused person took refuge in telling lies before a trial court, the only inference of his behaviour was that he had a guilty mind and wanted to cover up''.

I neither accept their explanation, nor find it to be reasonably probable. I have combed through the entire evidence on record and it does not raise any defence in favour of the

accused persons. I thus find at the close of the case of accused persons that they have failed to raise a reasonable doubt in my mind.

After the close of trial and having considered the entire evidence on record and having made findings of fact which I have applied the law to, I hereby find that prosecution has established the guilt of the accused persons beyond reasonable doubt on all two counts. Accordingly, each of them is convicted of the offence charged with in count one and count two.

PRE SENTENCING HEARING

According to prosecution, the convicts are not known. That out of the 14 containers, 6 have been recovered?

In mitigation, counsel for the convicts says, my lord, we humbly plead for leniency. The accused person are young man, they are not known to the law. Their ages at the time they were produce before this honourable court were 35, 27 and 35 years respectively. Now, A1 is about 38 years, A2 is about 30 years and A3 – 38 years. They are still in their prime ages. My lord would note that A1 is having a health situation and suffered stroke during trial and still has not duly recorded. My lord A1 is a breadwinner and a businessman and became part of this case as a result of his business transaction. A2 and A3 are also not known to the law so my lord we pray that you deal leniently with them in the interest of justice. We pray accordingly. A2 and A3 have been in custody for a long time and so we pray that my lord takes into consideration the time spent in custody to mitigate the sentence.

SENTENCING

The offence of stealing falls under the 2nd degree felony offences that carry a maximum imprisonment term of 25 years. A conviction on a charge of conspiracy to steal also

carries with it the same sentence as the substantive offence. Thus for both count one and count two, I can sentence the convicts on each offence to a maximum of twenty five years in custody.

In arriving at a sentence, I have considered the fact that convicts had shown no remorse for their crime and taken prosecution through a full trial to establish their guilt. They had by so doing wasted the time and resources of the state and also put prosecution witnesses through unnecessary expense in coming to court.

The value of the containers is also on the high side and out of the fourteen, only six were recovered. The value of the unrecovered containers is…….

Again, this was a premeditated offence which they had set out to execute by involving unsuspecting persons like PW2 and PW3. The offence was well co ordinated and planned right from the beginning where they had ensured that PW2 never met either A1 or A3 up to the point where A2 had vacated his house and made communication with him impossible in order to avoid detection after the offence. And PW2 had had to travel the length and breadth of the jurisdiction in search of the containers as it was to him that same were released. Whilst he was so doing, the convicts were busy selling same off and obtaining pecuniary gains for their criminal achievement.

In mitigation

I have considered the time spent in custody by the convicts prior to the court admitting them to bail and after A2 and A3's bail was revoked after they absconded in the course of the trial.

In consideration of the above factors, on count one, I hereby sentence A1 each of the convicts to an eight year term of imprisonment on count one and A2 and A3 to a seven

year term of imprisonment. A ten year term of imprisonment on count two. The terms are to run concurrently.

(SGD)

H/H BERTHA ANIAGYEI (MS)

(CIRCUIT COURT JUDGE)

A.SP.STELLA ODAME FOR THE REPUBLIC PRESENT

PRINCE KWAKU HODO FOR THE CONVICTS PRESENT.