CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON TUESDAY, 27TH JUNE, 2023

SUIT NO. D1/13/19

THE REPUBLIC

VRS

JOHNSON KOFI NTI

JUDGMENT

On the 22nd day of December 2022, I determined that Prosecution had established a prima facie case against the Accused Person on a charge of Robbery and he was called upon to open his defence. In the same ruling, I acquitted and discharged the Accused Person and others on a charge of Conspiracy to Commit Crime namely Robbery.

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 is 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 .***

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***.

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 his evidence-in-chief, Accused Person said he was innocent of the charge. He said that he was arrested from his home around 5:00 am on the 23rd day of March, 20219 and taken to the police station where he was assaulted and tortured to confess to robbery.

Accused Person said he denied committing any such offence and told the police that it was the security men who did the connection but he knew nothing about it. The police conducted a search at his house and also in his vehicle but did not find anything connecting him to the robbery.

Further, the police seized his phone and asked him to direct anyone who called him to a particular place. He did so and A2-A7 were arrested. He said he was never at the scene on the day of the commission of the offence, that no identification parade was conducted for the security men on duty to point him out even though he personally requested for same to be done.

Finally, Accused Person said he had no knowledge about the knives, cutlasses, cutter, bottles and scissors that were presented to this court and he has never touched those items.

Accused person closed his case after this.

To begin with, I do not believe the evidence of the Accused Person. I found his evidence not to be credible. This is because he contradicted his own evidence-in-chief under cross-examination. In his evidence-in-chief, specifically paragraph 11 and 12, he said that after his arrest, the police made him direct anyone who called his phone to a spot where he hangs out with his friends. He later found out that the other Accused Persons who had called his phone and whom he had directed to the spot were arrested by the police. This means that the others were his friends and they knew the spot where they all hang out.

However, under cross-examination by Prosecution, at page 124 of the record of proceedings, Accused Person denied knowing any of the men who were arrested.

Q: *And when they sent you to the police station you voluntarily gave your statement and mentioned 6 other people as your accomplices.*

A: *No my lady. When I was arrested at home and taken to the police station, I inquired from them my offense and I was told I should get to police station and I would know. Upon getting to the police station, they put me under duress by shocking me and insisted that I should confess. Later they brought in some other boys who they claim they had arrested at a drinking spot and said they were my accomplices in an offense. I did not know those boys from anywhere.*

Accused Person in one breath, wants the court to believe that the other persons whom he had been charged with and whom I had acquitted and discharged were his friends. They called him while he was in the custody of the police and he was forced to direct them to a particular spot where they were arrested. Then on another hand, he wants this court to believe that he does not know any of them and that they are "some other boys'' whom the police had arrested on their own without any coerced assistance from him and brought to the police station while he was being interrogated.

The law is settled that where an accused person gives evidence which conflicts with his earlier statement, the court is bound to treat him with suspicion as to the veracity of his evidence. It is upon this basis that I do not believe the evidence of the Accused Person.

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."***

I also do not find the evidence of the Accused Person to be reasonably probable. His evidence that he was in his home when he was arrested by the police around 5 a.m. is nothing but an afterthought. This is because all prosecution witnesses testified that he was arrested while driving in town after midnight. Prosecution witnesses, particularly PW1 and PW3 were convincing as to the mode of arrest and where Accused Person was arrested.

It would be difficult to explain away or hold that it was by mere coincidence that some of the weapons that were used to commit the crime were found in Accused Person's car boot on the very night that the offence was committed. That the Accused Person was arrested within a few hours after the commission of the offence and in the same jurisdiction and he also led the police to retrieve all the stolen items from an uncompleted building that very day is proof beyond reasonable doubt of Accused Person's involvement in this crime.

That Accused Person chose to tell lies to this Court in itself is an indication of his guilty mind. In the case of ***Munkaila v The Republic [1995-96] 1 GLR 367, 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''.

Finally, I have combed through the entire evidence on record to determine if it raises any defence in favour of the Accused Person. In so doing, one issue that has plagued my mind is the fact that on the use of the weapons, Prosecution was not able to produce any of the security men whom the Accused Person allegedly threatened and locked up prior to the commission of the crime in order to prevent their resistance to the commission of the offence.

No fingerprint evidence was also taken to prove that the weapons that were found at the scene were used by the Accused Person in the commission of the offence to prevent a resistance of the stealing of the items. Coupled with the insistence of the Accused Person that the security men "did the connection'' means that whereas I am certain that the Accused Person stole the items, I entertain doubts as to whether indeed the Accused Person used threat of force or harm to lock up and prevent the security men from resisting

the commission of the offence or the security men were part of "the connection'' and so offered no resistance. That would mean that some of the weapons were simply a ruse and others were used to force open the container that had the items.

It is trite that all reasonable doubts in the mind of the court must be resolved in favour of the accused person. See the case of ***Akilu v. The Republic [2017-2018] SCGLR 444 at 451***

In that regard, I find that at the close of trial and having analysed all the evidence on record, the charge of Robbery particularly the element of using force, harm or the threat of it to prevent a resistance to the stealing is wobbling on its legs. However, the other element of the offence which is stealing stands proven beyond reasonable doubt in my mind.

Section 154 (1) of the Criminal Offences Procedure Act, 1960 (Act 30) is headed —When Offence Proved is Included in Offence Charged. It provides that;

(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete lesser offence, and such combination is proved but the remaining particulars are not proved, he may be convicted of the lesser offence although he was not charged with it.

Stealing is a lesser offence to robbery. Indeed, the particulars of robbery include stealing and so on a charge of robbery, a combination of some of the particulars constitute the complete lesser offence of stealing.

At the close of the trial, I find that Prosecution has proved beyond reasonable doubt that the Accused Person stole 61 boxes of air conditioners, 2 LG flat screen television sets, 1 Midea water dispenser and 1 Nasco kettle all valued at one hundred and twenty

thousand, nine hundred and fifty Ghana cedis (GH¢120,950.00). I hereby convict the Accused Person of the offence of stealing.

PRE SENTENCING HEARING

The offence of Stealing is a second degree felony which carries with it a maximum term of twenty five years imprisonment upon conviction.

According to the Prosecution, the convict is not known. All the items were also recovered on the day of the offence and were recovered in good condition.

Kpegah J. (as he then was) in the case of ***Impraim v. The Republic [1991] 2 GLR 39-47*** stated that in considering the sentence to be given to a convict either upon first trial or during appeal, the courts had to take into consideration 'the gravity of the offence taking into account all the circumstances of the offence. In this wise, regard must be had to such matters as the age of the offender, his health, his circumstances in life, the prevalence of the offence, the manner or mode of commission of the offence — whether deliberately planned and executed — and other like matters.'

In mitigation, convict is a first time offender and young person at the age of 35. He says he has a family. The fact that all the items were recovered in good condition also mitigates in his favour.

This offence was premeditated. It was planned right to the last detail of where the items would be kept after the theft. Convict also took Prosecution through a full trial even though the circumstantial evidence on record pointed to him firmly as having fully participated in the commission of the offence. He has not shown any remorse for his

actions throughout the course of this trial and even after the trial. These are the aggravating factors.

Despite the aggravating factors, I find that it is in the interest of the reformative element of the criminal justice system that when young persons have had their first brush with the law, they be given a custodial sentence if at all that is aimed at reformation rather than retribution.

SENTENCING

Accordingly, the convict is sentenced to a five-year term of imprisonment. He is also to enter into a self-recognizance bond to keep the peace and be of good behavior for a period of twenty-four months after his release from custody. In default, he would serve a three-month term of imprisonment.

(SGD)

H/H BERTHA ANIAGYEI (MS)

(CIRCUIT COURT JUDGE)

D.S.P JACOB ASAMANI FOR THE REPUBLIC