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

SUIT NO. D1/20/22

THE REPUBLIC

VRS

SUMAILA TETTEH

RASHEED SULEMANA @ABIN WONI

FAISAL HUSSEIN @ONE GOD

MUSAH ADAMU @KILLER BEN

PATRICK NSIAH YAWSON@NAB

RULING

The Accused Persons are before this Court on three charges; ***Conspiracy to Commit Crime; namely Robbery contrary to sections 23(1) and 149 of the Criminal Offences Act, 1960 (Act 29)***, and two counts of ***Robbery contrary to section 149 of the same Act 29.***

The particulars of offence are that on the 16th day of February, 2019 at about 2:00am at Community 5, Tema in the Tema Metropolis and within the jurisdiction of this Court, the Accused persons with one Appiah @Ali now deceased did agree to act together with a common purpose to commit crime, namely Robbery.

The particulars of offence for count two and three are that on the same day, time and place and within the jurisdiction of the Court, they with one Ali, now deceased with force and to overcome the resistance of one Yaw Agbordo, a watchman at Fosua Plaza attacked the said Yaw Agbordo and subjected him to beatings among threats and broke into

various offices including Provident Insurance Office and took away cash the sum of GH¢36,174.60, cheques written in the name of the Company worth GH¢14,961.50. They also broke into Peedix wine shop and took away some of the wine valued at GH¢2,000.00 and an amount of GH¢5,000.00.

The Accused Persons pleaded not guilty to each of the offences. By so doing, they cast upon Prosecution the singular duty of leading cogent, reliable and credible evidence to establish their guilt beyond reasonable doubt. The veritable Dotse JSC in reading the decision of the Supreme Court in the case of ***Amaning v.The Republic [2020) GHASC 47***, had this to say by way of a prologue;

"William Blackstone, an 18th century English jurist in a statement on the hallowed principle of "Innocent until proven guilty:-rights of an accused person'' upon which our criminal justice administration has been founded in Article 19(2) (c) of the Constitution, 1992 stated as follows: "better that ten guilty persons escape than that one innocent suffer''. The above constitutes the fulcrum of our criminal justice jurisprudence''.

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.

Prosecution in proof of its case called two witnesses. According to PW1, she works in the wine shop which is in the same building with Provident Insurance. On the 16th day of February, 2019, she got to the shop at around 8:30am and realized that it had been broken into.

The drawers had been pulled out and ransacked. She realized that two envelopes containing an amount of GH¢9,000.00 were stolen together with some bottles of drinks which cost GH¢2,000.00. She was informed that some robbers had come to the building and robbed her shop as well as that of Provident insurance.

THE EVIDENCE OF PW2

According to PW2, on the 16th day of February, 2019, a cashier at Provident Insurance Company by name Christian Amissah reported a case of robbery on behalf of the company. According to the complainant, at about 2:00am, armed robbers stormed their company's office, assaulted the night watch man and broke into their office. They made away with cash of GH¢36,172.60 and other cheques written in the name of the company worth GH¢14, 963.50.

PW2 says that he proceeded to the scene for investigations on the same day. He observed that the culprits also broke into a wine shop and made away with cash of GH¢9,000.00 and bottles of wine valued at GH¢2,000.00. He took photographs of the ransacked drawers. He took a witness statement from the complainant and the security man, Yaw Agbordo. He also took statements from PW1 as well as the branch manager of Provident Insurance.

PW2 says that in the latter part of December 2021, police intelligence led to the arrest of the Accused Persons by the Greater Accra command and as part of preliminary investigations, Accused Persons confessed to the offence.

PW2 further says that he arrested the Accused Persons and took investigation caution statements from them, and that although A1, A2, A3, and A4 denied the offence, A1 admitted to it by saying he did not go along to commit the offence at the plaza but was later given one bottle of wine. He charged the Accused Persons and obtained charge statements from them.

He tendered in evidence Exhibits A and A1 as the investigation caution statement and charge statement of 1st Accused, Exhibit B and B1 as the investigation caution statement and charge statement of 2nd Accused, Exhibit C and C1 as the investigation caution

statement and charge statement of 3rd Accused, Exhibit D and D1 as the investigation caution statement and charge statement of 4th Accused, Exhibit E and E1 as the investigation caution statement and charge statement of 5th Accused and Exhibit F as a picture of an accounts office dated 16th February 2022.

CONSIDERATION BY COURT

It is elementary that a court must determine whether or not prosecution has at the close of their case, established a prima facie case against the accused persons. ***Section 173 of the Criminal 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."

According to the Supreme Court in the case ***of Asamoah &Anor. Vrs. The Republic[2017-2018] 1 SCGLR, 486, Adinyira JSC*** speaking for the apex court, stated that "the underlying factor behind the principle of submission of no case to answer is that, an accused person should be relieved of the responsibility of defending himself when there is no evidence upon which he may be convicted. The grounds under which a trial court may uphold a submission of no case as enunciated in many landmark cases whether under a summary trial or trial by indictment may be restated as follows;

a) There had been no evidence to prove an essential element in the crime
b) The evidence adduced by the prosecution had been so discredited as a result of cross examination; or
c) The evidence was so manifestly unreliable that no reasonable tribunal could safely convict upon it
d) The evidence was evenly balanced in the sense that it was susceptible to two likely explanations, one consistent with guilt, one with innocence.

See the celebrated case of ***The State v. Ali Kassena [1962] 1 GLR 144 in which the Practice Direction issued by the Queens Bench Division in England [1962] 1 E.R 448 (Lord Parker CJ) was approved*** **of**

On count one, on a charge of Conspiracy to Commit Robbery, the Prosecution must prove that the five Accused Persons agreed to act together with a common purpose to commit robbery.

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. There were at least two or more persons
2. There was an agreement to act together
3. The 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)

Prosecution's evidence on this charge is circumstantial. Their evidence is that A1 confessed to the offence and mentioned the other Accused Persons as his co- conspirators, and that this confession was made by A1 in his investigation caution statement.

In the case of ***Francis Yirenkyi v. The Republic, CRA J3/7/2015 delivered on 17th February 2016 (unreported), SC,*** Akamba JSC in reading the decision of the apex court had occasion to elaborate on the evidential value of confessions made against other accused persons. He held that "It is trite criminal law that a confession made by an accused person which is admitted in evidence is evidence against him. It is however not evidence against any other person implicated in it (See Rhodes (1954) 44 CR. App. R. 23) unless it is made in the presence of that person and he acknowledges the incriminating parts so as to make them, in effect, his own''.

The supposed confession of A1, if at all, was only evidence against him and not evidence against the other Accused Persons. Indeed, in the said confession statement, A1 said that he stood back to observe human or vehicular movement and the others broke into the wine shop and took away some drinks. He says that there was an old man at the premises who was coerced to keep silent, and that none of them broke into any shop apart from

the wine shop, that because he was afar, he did not see the implements or tools used to break the shop and it could be that the implements were planted in there before they went. A1 says that he never saw anyone carrying any weapon in there.

There is no mention of what specific role each of the other accused persons played in the commission of the offence. Prosecution does not provide evidence of how each of the Accused Persons acted in furtherance of their common purpose to rob PW1's shop and Provident Insurance on the said date. There is no evidence as to the role each of them played in the robbery to enable the court arrive at an inference that there was an agreement between them to act together.

In the case of ***Mali v. The State [1965] GLR 710,*** the Supreme Court laid out a fifth ground for upholding a submission of no case where it held that "where at the end of prosecution's case, the court requires further evidence given by prosecution, then the irresistible inference is that the prosecution has not made out a case and the accused should be acquitted''.

On this basis, I find that Prosecution has failed to lead relevant evidence to establish that the Accused Persons acted together with a common purpose to commit the offence of robbery. They are accordingly acquitted and discharged on count one.

On counts two and three, the offence of robbery is provided for in ***Section 149 of the Criminal Offences Act, 1960 (Act 29).*** It is however defined by ***section 150*** of the same Act to be:

"**Section 150 – Definition of Robbery**

A person who steals a thing is guilty of robbery if in and for the purpose of stealing the thing, he uses any force or causes any harm to any person, or if he uses any threat or criminal assault or harm to any

person, with intent thereby to prevent or overcome the resistance of that or of other person to the stealing of the thing."

A person who steals a thing commits robbery;

a) If in and for the purpose of stealing the thing, the person uses force or causes harm to any other person, or
b) If that person uses a threat or criminal assault or harm to any other person, with intent to prevent or overcome resistance of the other person to the stealing of the thing.
c) The thing stolen must be in the presence of the person threatened.

In the case ***of Behome v. The Republic [1979] GLR 112***, the court held that "one is only guilty of robbery if in stealing a thing, he used any force or caused any harm or used any threat of criminal assault with the intent thereby to prevent or overcome the resistance of his victims to the stealing of the thing''

Thus Prosecution, in the circumstances of this case, in order to establish a prima facie case on count two and three must prove that;

1. The accused persons stole an amount of GH¢36,174.60 and cheques with a face value of GH¢14,961.50 as well as PW1's GH¢9,000.00 and bottles of wine.
2. That in stealing the said items, they assaulted and threatened one Yaw Agbordo, a security man at post.
3. That their intention of assaulting and threatening the said Yaw Agbordo was to prevent or overcome his resistance to the stealing of the items.

On count two, there was no evidence from the complainant or anyone else from the company as to the stealing of their items. According to PW2, one Christian Amissah

reported the offence to him on the 16th day of February, 2019. The said complainant did not testify and neither did PW2 tender in evidence the statement made to the police.

PW2 in his evidence-in-chief said he visited the scene of the crime. He did not tender any documentary evidence to establish either directly or by inference that the said money and cheques were stolen from Provident Insurance. Prosecution's evidence was silent on the supposed robbery at Provident Insurance. It appeared as if they had abandoned the claim.

On count three, PW1 testified and said it was her husband's shop. She spoke of the ransacked state of the shop when she reported to work on the 16th day of February, 2019. PW2 tendered in evidence Exhibit F as a photograph of the ransacked state of the wine shop after the robbery.

PW1 was however clear in her evidence that she did not see the Accused Persons committing the offence and neither did she have any evidence of them committing same. Her knowledge as to their involvement stems from the fact that the police brought them to her shop in 2022 and indicated that they were the ones who robbed her shop three years earlier.

At page 17 of the record of proceedings, under cross-examination by A4, she had answered;

Q: *Please, do you know me?*

A: I know you.

Q: How did you get to know me?

A: I got to know you when you were brought by the police to my shop in handcuffs.

Q: When they brought us, what did they say we had done?

A: My Lord, they said you were the people that came to rob my shop.

She provided similar answers to all the other Accused Persons on the question as to how she knew them. That the police parade some persons in front of you three years after the commission of an offence to tell you that they are the perpetrators does not constitute evidence of the crime. What would constitute evidence of the crime is the Prosecution establishing how it arrived at the conclusion that the Accused Persons had perpetrated the offence prior to taking them to PW1's shop to point them out as such.

In this regard, although Prosecution said there was an old man at the scene who was assaulted and threatened by the Accused Persons, he was not called to testify in this court.

Prosecution did not call Yaw Agbordo; a night watchman whose name appears in count one and count two as having been assaulted and threatened by the Accused Persons at the scene prior to their supposed robbery on the said date. Although PW2 says he took a statement from the said Yaw Agbordo, same was also not tendered in evidence. There is thus no evidence of assault or threat made by the Accused Persons to anyone.

Prosecution appeared to be relying solely on the confession statement of A1 as proof of the offence. At pages 25 and 26 of the record of proceedings, PW2 answered under cross-examination by learned counsel for A1, A2, A3 and A5.

Q: The complainant was not an eye witness, not so?

A: Yes my Lord.

Q: Who was the eye witness to the alleged crime?

A: My Lord, the night watchman – Yaw Agbordo.

Q: Did he tell you the number of people who allegedly attacked him?

A: He said they were numbering about 6.

Q: So he was not clear with the specific number, is that not so?

A: Yes my Lord.

Q: Did he describe to you how the people looked like?

A: No my Lord.

Q: So nobody knew how the people looked like, is that not so?

A: Yes my lord.

Q: You told the court that you are an experienced policeman.

A: Yes

Q: Before you could listen to them, how did you come to the conclusion that they were the people who committed the crime?

A: One is based on the interaction they had with the Greater Accra Regional Command and my personal interaction with them as the investigator.

Q: What interaction made you think that they are the people who might have committed the offence?

A: 1st Accused was subjected to thorough investigation and he admitted to it and further mentioned the place where they gathered, the time and how they operated, which was well noted in his investigation caution statement.

Q: You see, as an experienced officer, you should have known that once 1st Accused was subjected to torture at the Police Regional Headquarters, the tendency of telling lies is much higher.

A: My Lord, in all my police life, I have never touched a suspect. As far as policing is concerned, I regard human rights as very prominent so I re-emphasize that it is based on my personal interaction without any iota of torturing.

From the evidence of PW2, I can safely infer that Yaw Agbordo, the eye witness who was allegedly assaulted and threatened, was not even called upon to identify the Accused Persons; particularly A2, A3, A4 and A5. He also did not described them to the police.

Save for the confession of A1, Prosecution has no scintilla of evidence connecting the Accused Persons to this crime. PW2 under cross-examination by learned counsel admitted to this at page 29 of the record of proceedings when he answered;

Q: So in this case, if you do not go to their various homes to search them, how would you get to know if they are in possession of those cheques or not?

A: My Lord, police did their checks and the money and the said cheques were not retrieved.

Q: Invariably, you are telling this court that nothing incriminating was found on any of the accused persons, not so?

A: My Lord, I am re-emphasizing that the money and the cheques were not retrieved.

If at all, A1's supposed confession statement is evidence against himself only and not the other Accused Persons. As earlier said, the contents of his statement which was tendered in evidence as Exhibit A1 cannot be regarded as confessing to robbery on the said date. At best, it is a confession statement as to stealing and unlawful entry and not robbery and specifically regarding wines at PW1's shop. It does not mention any money and neither does it provide any information as to the robbery at Provident Insurance or the assault or threat of Yaw Agbordo.

Upon this basis, I find that Prosecution has failed to establish the relevant ingredients of counts two and three against the Accused Persons. A2, A3,A4 and A5 are accordingly acquitted and discharged on the two counts of robbery per count two and count three. A1 is acquitted and discharged on count two. However, on count three, with respect to A1, I find that per Exhibit A, he admitted to stealing wine from PW1's shop with some other people. His investigation caution statement was admitted into evidence without any objection from his counsel.

Prosecution has also led evidence of the said stealing. PW1 testified that the said wine belonged to her husband's shop by name Peedix. That she works there and witnessed the ransacking of her office was not challenged. PW2 tendered in evidence Exhibit F as a photograph of the state of her office after same was ransacked.

Her claim that bottles of wine worth GH¢2,000.00 and her cash sum of GH¢9,000.00 were stolen was also not challenged. The shop is located at Fosua plaza, the very place where A1 mentions in his investigation caution statement. A1 said they stole wines. It is wine that PW1 sells and some of them were stolen.

In the case of ***Teye alias Bardjo & Ors. v. The Republic [1974] 2 GLR 438***, the Court of Appeal held that "where two or more persons embarked upon a joint criminal exercise, each of the participants would be answerable for the acts done in pursuance of the joint enterprise including such acts as were incidental to and necessary for the achievement of the joint enterprise and were in the contemplation or ought to be in the contemplation of the participants at the time when the exercise was embarked upon''.

From A1's own confession statement, they had embarked on an enterprise to steal. His role was to be on the lookout for human and vehicular movement. That role was necessary for the achievement of their joint criminal enterprise. He performed the said role. They were successful in the criminal enterprise of stealing and he received a share of the booty.

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 a complete lesser offence of stealing.

I have considered whether the offence of unlawful entry would also suffice. However, per the wording of ***section 154(1)***, the charge levelled against an accused person must consist of several particulars and where only a combination of some of them are proven and that constitutes a lesser offence, the court can convict on that lesser offence. The offence charged is robbery. It consists of several particulars one of which is stealing. Whereas stealing always constitutes a part of the elements of robbery, unlawful entry may be a part of the robbery depending on the circumstances of the case.

That being so, unlawful entry cannot be regarded as one of the lesser offences on a charge of robbery. It is upon this consideration that I ended my deliberations on whether or not Prosecution has proved the offense of unlawful entry.

At the close of Prosecution's case, I find that Prosecution has established a prima facie case of stealing against A1 and he is hereby called to open his defence if he so desires.

(SGD)

H/H BERTHA ANIAGYEI (MS)

(CIRCUIT COURT JUDGE)

A.S.P. STELLA ODAME FOR THE REPUBLIC

OSMAN MOHADEEN FOR A1, A2, A3 and A5