

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON TUESDAY, 30TH MAY, 2023

SUIT NO. D1/11/21

THE REPUBLIC

VRS

FRANK KOJO ESHUN

TIMOTHY ASEMPA

SETH OHENE OSEI

RULING

The accused persons are before this Court on four counts. On count one, they are charged with conspiracy to commit crime namely stealing contrary to *Section 23 (1) and 124 (1) of the Criminal Offences Act, 1960 (Act 29)*, on count two, they are charged with conspiracy to commit crime namely, forgery of document contrary to *section 23(1) and 158 of the Criminal Offences Act, 1960, (Act 29)*, count three with stealing contrary to *section 124(1) of the criminal offences Act 1960 (Act 29)* and count four with forgery of document contrary to *section 158 of the Criminal offences Act, 1960 (Act 29)*.

The particulars of offence on count one are that in the month of February, 2013 at Heavy Industrial Area in the Tema Circuit and within the jurisdiction of this Court, they agreed to act together with common purpose to commit crime to wit conspiracy to stealing.

For count two, the particulars of offence are that on the aforementioned date, time and place, they agreed to act together with common purpose to commit the crime of forgery of document.

For count three, the particulars of offence are that on the aforementioned date, time and place, with the intent to steal, they dishonestly appropriated cheques amounting to two million, seven hundred and forty-four thousand, four hundred and seventy-four Ghana cedis, fifty pesewas (Ghs 2,744,474.50) the property of Diamond Cement Ghana Limited.

For count four, the particulars of offence are that on the aforementioned date, time and place, with the intent to forge document, they forged Diamond Cement Ghana Limited Certificate to commence Business, Certificate of Incorporation and Ghana Revenue Authority Certificate of Registration to open Account Number 2141120000668031 in the name of Diamond Cement Ghana Limited at Union Rural Bank Winneba Branch and deposited cheques valued two million, seven hundred and forty-four thousand, four hundred and seventy-four Ghana cedis, (Ghs 2,744,474.00) the property of Diamond Cement Ghana Limited.

The brief facts of the case as read by prosecution is that complainant Simon Dzata is an account clerk working at Diamond Cement Ghana Limited Head Office located at Heavy Industrial Area Tema.

A1 Frank Kojo Eshun @ Nana Ato Arhin is a farmer, A2 Timothy Asempah is a Banker and A3 Seth Ohene Osei who is a Galamsey operator now at large having absconded after he was granted bail by the Court.

Ken Kwame Okoso, Philip Ayensu @ Nana Dabanka Gyeabour, Yaw @ Yaw Sammy, Kwasi Appiah and Richard are on the run and George Kofi Konedu @ Western King George who has been discharged due to his ill health after prosecution pray the court for same. On 15th January 2013, a1 was attached to the Commercial Department of the complainant company as a National Service Person.

A1 was assigned to check the statement received from Aflao where Diamond Cement Ghana Limited factory is located on daily basis for the dispatch made by them to Tema customers and also reconcile the account of the receipt brought by the dispatch. Between 2nd February 2013 and 21st February 2013, Diamond Cement Limited officers detected that, most of the company cheque all valued Two Million, Seven Hundred and Forty-four Thousand, Four Hundred and Seventy-Four Ghana cedis Fifty pesewas (Gh 2,744,474.50) which were supposed to be paid into Diamond Cement Ghana Limited account at Agricultural Development Bank (A.D.B) Tema branch were stolen by A1.

On the 22nd February 2013, the case was reported at the community one police station. During investigation, it came to light that A1 conspired with A2 and A3, and others on the run to steal the cheques. They forged Diamond Cement Ghana Limited Certificate to commence business, certificate of incorporation and Ghana Revenue Authority certificate of registration to open account number 2141120000668031 in the name of Diamond Cement Ghana Limited at Union Rural Bank Winneba Branch and deposited the stolen cheque all valued GHs 2,744,474.50 into the account. A3 at large posed himself as the director of Finance and Administration, Ken Kwame Okoso posed himself as director of operation.

A2 conspired with the other accused persons and intentionally used Sampson Damptey Tetey who died and was buried at Osu in 2005 photograph as General Manager of the Diamond Cement Ghana Limited to open the account at Union Rural Bank. A2 being a banker and knowing what he was doing, intentionally failed to visit the company to ascertain whether A1, A3, and others on the run are true element of Diamond Cement Ghana Limited. He rather went ahead and open the account without cross checking.

Accused persons later withdrew some of the money from Ecobank, International Commercial Bank and thirty – one Rural banks under Apex Bank with others on the run and shared the booty amongst themselves. Again, A1 who was not a national service person forged his certificate and other document.

Some of the accused person and others on the run forged some official documents such as national health insurance, voter I.D cards. Ghana Passport and diverted some of the stolen money to the above mentioned banks and withdrew same with aid of A2. The accused persons and others on the run withdrew cash of one million three hundred and thirty thousand, Nine Hundred and Fifty-Six Ghana Cedis (Ghs 1,330,945.00). An amount of One Million Four Hundred and Thirteen Thousand Five Hundred and Twenty-Eight Ghana Cedis, Fifty Pesewas (GHs 1,413,528.50) was recovered.

A1 and George Kofi Konadu who has been discharged from court were arrested in similar offences and sentenced to serve their sentence at Nsawam Medium Prisons. A3 was also arrested in his hide out at Akim oda Whilst A2 was arrested at Winneba. After investigation, the accused persons were charged with their respective offences and brought before this honorable court.

Prosecution in proof of its case called two witnesses to testify. Prosecution witnesses particularly PW2, the investigator relied heavily on documentary evidence. Both witnesses were extensively cross examined by A1 prose and counsel for A2.

At the close of prosecution's case and in accordance with *section 173 of the criminal and other offences (procedure) Act, 1960, Act 32*, I hereby find that prosecution has established a prima facie case against 1st accused on all counts and against A2 on count one and three. The evidence of prosecution has established all the relevant ingredients of the offences, the evidence has not been so discredited under cross-examination. The evidence is manifestly reliable such that the court can find a conviction on same where the accused persons refuse to open their defence and the evidence at this stage lends itself to only one explanation, the prima facie guilt of the 1st accused and 2nd accused.

Accordingly, I hereby find that prosecution has established a prima facie case against them and they are called upon to open their defence if they so desire on their respective counts.

(SGD)

**H/H BERTHA ANIAGYEI (MS)
(CIRCUIT COURT JUDGE)**

A.S.P. STELLA ODAME FOR THE REPUBLIC PRESENT

MR. CHARLES ASIEDU COUNSEL FOR THE 2ND ACCUSED PERSON
PRESENT