

**IT THE SUPERIOR COURT OF JUDICATURE IN THE HIGH COURT OF JUSTICE
TAMALE, NORTHERN REGION**

SUIT NO. NR/TL/HC/CC1/8/23

DELIVERED ON 12TH OCTOBER, 2023

THE REPUBLIC

VRS

- 1. ADAMU ISSAH**
- 2. ALHASSAN (AT LARGE)**

Counsel

AKPENE FUGAR HOLDING BRIEF OF ISAAC ANKAH

FOR THE REPUBLIC PRESENT

SYLVESTER ISANG FOR A1 PRESENT

Coram

JUSTICE ERIC ANSAH ANKOMAH

JUDGMENT

Background

The accused persons who are friends have been charged with the offence of conspiracy to commit crime to wit robbery. The 1st accused person has been charged with the offence of robbery. On 9th day of May, 2022 the accused persons allegedly robbed one Isaac Minta of his Toyota Hilux Pick-Up at a popular drinking spot in Tamale and succeeded in driving the stolen vehicle from Tamale to Paga border and it was taken to Ouagadougou

in Burkina Faso. On 11/11 2022 A1 appeared before me and opted to speak Dagbani. The charges were read to him in English and interpreted in Dagbani to his understanding and appreciation before pleading not guilty to the charges. That as at 24/11/2022, 1st accused person had been served with the witness statements of all witnesses including investigation cautioned statements and charged cautioned statement. On 25/11/2022, counsel for A1 pleaded for time to study the documents served on A1 and the case was adjourned to 28/11/2022 for case management conference. Hearing commenced on 29/11/2022.

Charges

The charges levelled against the accused persons as appeared on the charge sheet are as follows:

COUNT ONE

STATEMENT OF OFFENCE

Conspiracy to commit crime to wit Robbery, Contrary to Section 23(1) and 149 of Criminal Offences Act, 1960 (Act 29)

PARTICULARS OF OFFENCE

Adamu Issah, 30 years, Tipper Truck Driver, Alhassan (at large) on or about the 9th day of May, 2022 at Jisonayili, a suburb of Tamale in the Northern Region of the Republic of Ghana and within the jurisdiction of this Court did agree to act together with a common purpose to use force to steal a Toyota Hilux Pick-up with registration number GN 6207-20 with chassis No. MROKB9CD115310575 which had a Huawei Y8P Smart phone and other personal and official documents in the car the property of Ghana Highways Authority with intent to overcome the resistance of the driver, Isaac Minta to the stealing of the Toyota Hilux Pick-up and its content.

COUNT TWO

STATEMENT OF OFFENCE

Robbery, Contrary to Section 149 of Criminal Offences Act, 1960 (Act 29)

PARTICULARS OF OFFENCE

Adamu Issah, 30 years, Tipper Truck Driver, on about the 9th day of May, 2022 at Jisonayili, a suburb of Tamale in the jurisdiction of this Court did use force to steal a Toyota Hilux Pick-up with registration number GN 6207-20 with chassis No. MROKB9CD115310575 which had a Huawei Y8P Smart phone and other personal and official documents in the car the property of Ghana Highways Authority with intent to overcome the resistance of the driver, Isaac Minta to the stealing of the Toyota Hilux Pick-up and its content.

Facts

The complainant Isaac Minta is the North East Regional Surveyor of Ghana High Ways Authority and resident of Nalerigu whilst the 1st accused person Adamu Issah is a Tipper Truck Driver and also resident in Tamale.

On 9th May, 2022 the complainant and his driver brought an official vehicle Toyota Hilux Pick-Up with Registration No. GN 6207-20 with chassis No. MROKB9CD115310575 belonging to Ghana High Ways Authority, North East Region to Tamale for servicing. In the evening of the same day, the complainant drove the vehicle to King David, a popular drinking spot at Jisonayili to buy food. After eating at about 2230 hours, the complainant decided to return to his Guest House where he was lodging. Just as complainant sat in his car, two men wielding A.K. 47 Assault rifle emerged and attacked him at gun point, picked him out of the car amidst firing in the air and bolted with the Pick-Up. Complainant had his Huawei smart phone, documents covering the vehicle as well as other official documents in the vehicle. On 26th June 2022, Police intelligence uncovered

that signals from the complainant mobile phone was transmitting from a location in Tamale near the MTN Office so the Police tracked the phones to a Phone Repairer, Mike Ali who was in possession of the phone and arrested him. During interrogation the Phone Repairer told the Police that it was the 1st accused person who brought the phone to him to be unlocked. He gave the accused person phone number to the Police to be called. A Court order was procured leading to the disclosure of the call records and the identity of the accused person from his mobile service provider, MTN. The Police identified the accused person as someone who is already in brush with the law in similar violent crimes and was before the Circuit Court Tamale standing trial. On 15th July, 2022, the accused person appeared in Court and was arrested. Upon interrogation the accused person admitted sending the phone to the repairer Mike Ali to have it unlocked for him. He was asked about how he came by the phone and the accused person alleged that one Alhassan and Mohammed all at large hired him to drive the Pick-Up in question to Paga for them and afterwards Alhassan gave the phone which was locked to him. He added that on reaching Paga, Mohammed took over the vehicle and crossed the Border with it to Burkina Faso. A search was conducted in the accused person house and a pen drive was found in a Laptop bag. The pen drive was opened and the files on the Pen drive led to the discovery that it was connected to another car robbery case. Vehicle seats, among others were also found in the accused person's room.

The accused person upon further interrogation admitted in spying for 4x4 vehicles V.6 and V.8 and their owners in Tamale Metropolis and passing on such information to his accomplices who in turn move to the target location and rob their victims of their vehicles. During investigations the accused person mobile phone was surfed through and an amount of GH¢118,000 was found in his electronic wallet. Same was cashed out for evidential purposes along with the mobile phone. On 20th July, 2022 identification parade

was conducted and the complainant attended and identified the accused person as one of the robbers who attacked him and robbed him of the vehicle and other items.

Legal Obligation on Prosecution

The position of the law is that an accused person is presumed innocent of the offence charged until proven guilty or has pleaded guilty. This call for the prosecution to lead cogent evidence to support the charge in order to secure conviction if no reasonable defence is proffered by the accused person. This legal obligation is imposed on the prosecution by article 19(2) (c) of the 1992 constitution of Ghana. The requirement is that the prosecution must prove the guilt of the accused person after he has pleaded not guilty to the charge. This legal obligation on the prosecution require the prosecution to lead cogent evidence to prove the offence charged before a Court of competent jurisdiction can call the accused person to open his defence if any.

Article 19 (2) (c) of the 1992 constitution stipulates that:

“A person charged with a criminal offence shall-

c. be presumed to be innocent until he is proved or has pleaded guilty.”

In the instant case the 1st accused person pleaded not guilty to two counts of conspiracy to commit crime to wit robbery and robbery. The prosecution bears the burden of proof which is to produce sufficient evidence to prove the guilt of the accused persons beyond reasonable doubt. This principle has been codified in sections 11(2), 13(1) and 22 of the Evidence Act 1975 (NRCD 323). There are plethora of cases to support the principle that, the burden of proof of guilt of the accused person is on the prosecution and it is proof beyond reasonable doubt.

See **DONKOR V THE STATE [1964] GLR 598, SC**

YEBOAH V THE REPUBLIC (CONSOLIDATED) [1972] 2GLR 281

In the Ghanaian context the burden of proof which is on the prosecution, connotes that both the burden of persuasion or the legal burden and the evidential burden or the burden to produce evidence is on the prosecution. It is the duty of the prosecution to prove every element of the offence against the accused person. Again the prosecution assumes the evidential burden to adduce evidence that will suffice to establish every element of the offence charged.

See: **Page 50 of Essentials of The Ghana Law of Evidence by S.A. Brobbey.**

Section 11(2) of the Evidence Act 1975 (NRCD 323) also states that:

“In a criminal action the burden of producing evidence when it is on the prosecution as to any fact which is essential to guilt requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of a fact beyond a reasonable doubt.”

The standard of proof beyond reasonable doubt was explained by Lord Denning in the case of **Miller v Minister of Pensions (1947)2 A.E.R 372** as follows:

“Proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is strong against a man as to leave a remote possibility in his favour which can be dismissed with the sentence of course it is possible but not the least probable, the case is proved beyond reasonable doubt, but nothing short of that will suffice”.

The following Supreme Court cases have all affirmed the fact that when we say proof beyond reasonable doubt it actually means proof of the essential ingredients of the offence charged and not mathematical proof.

TETTEH v THE REPUBLIC [2001-2002] SCGLR 854

DEXTER JOHNSON v THE REPUBLIC [2011] 2 SCGLR 601

FRIMPONG A.K.A IBOMAN v REPUBLIC [2012] 1 SCGLR 297

The ratio is that the prosecution must lead evidence to establish all the elements of the offence of conspiracy to commit crime to wit robbery and robbery failing which the accused persons are entitled to acquittal and discharge.

In the quest to surmount this legal burden and to prove the guilt of the accused persons on the charges levelled against them, the prosecution called three (3) witness namely; Isaac Minta-the victim (PW1); Ali Michael-a mobile phone repairer (PW2) and Sallah Courage Vilawoe-the police investigator (PW3). I hereby set out the evidence of the witnesses.

Evidence of PW1-Isaac Minta

The witness statement of PW1 filed on 24th November, 2022 and adopted as evidence-in-chief on 29/11/2022 is as follows;

I am a Surveyor with the North East Regional Office of the Ghana Highways Authority and a resident of Nalerigu.

That on the 9th day of May, 2022 my driver and I arrived in Tamale in a black Toyota Hilux Pick-up with registration number GN 6207-20 and chassis no. MROK89CD115310575 belonging to the Ghana Highways Authority for servicing.

On arrival we went to the mechanic shop located at the industrial area, Tamale for the servicing however, I was informed by the mechanic to return with the vehicle the following day so I drove the vehicle to Jisonayili and lodged in a guest house.

At about 9.30pm, I drove to King David, a popular drinking spot at Jisonayili to buy food. After eating, I decided to return to relax in the vehicle for a while before returning to the Guest House.

Just as I sat in the car two men wielding AK47 assault rifle emerged and attacked me at gun point, pulled me out of the car amidst firing in the air and bolted with the car.

I run for my life leaving behind my pair of slippers at the scene of the crime. My Huawei Y8P smart phone, documents covering the vehicle as well as other official documents which I had with me in the vehicle were taken away.

I reported the incident to the police and I volunteered a statement.

On 20th July, 2022, the police conducted an identification parade of which I attended and identified the accused as being one of the robbers who attacked me on 9th May, 2022.

The witness was cross-examined by Counsel for the first accused person.

Evidence of Pw2- Ali Michael

The witness statement of Ali Michael filed on 24/11/2022 was adopted as his evidence-in-chief on 6th December, 2022 and it is as follows:

I am a Mobile Phone Technician and a resident of Koblimahagu, a suburb of Tamale.

That on 26th day of May, 2022, at about 2:30pm, I was in my shop which is located adjacent the MTN building when one man who alleged he is called Alhassan brought in Huawei Y8P smart phone for me to unlock for him.

On the very day, the unlocking was not successful so, I told him to go and come back the following day.

On the following day, 27th May, 2022 at about 9am, he brought an iPhone 11 and requested that I replace the screen for him and left my shop afterwards.

That later in the day, the police came to my shop and enquired about the said Huawei phone. So, I called the person who brought the phone and asked him to come for the phones but he told me that he will come for it later.

When he subsequently came for his iPhone 11. I told him that his Huawei phone was not ready and that he should wait for a while in order for me to fix it but he refused, paid for his iPhone and left.

Since then he has not come to my shop again. I have called him several times to come for his Huawei phone but he has failed to come for it, sensing probably that something must have gone amiss.

I volunteered a statement to the police.

The witness identified the Huawei phone A1 brought to him to unlock and it was marked as ID 1.

Counsel for A1 cross-examined PW2 by asking him only two questions.

Evidence of PW3- Sallah Courage Vilawoe

The third prosecution witness was the Police investigator who investigated the case. His witness statement also filed on 24/11/22 was adopted as his evidence-in-chief on 12/12/2022 and I hereby reproduce same.

My name is Sallah Courage Vilawoe

I am a Detective Corporal stationed at Tamale District, CID.

On 10th day of May 2022, at about 0200 hours while on duty a case of robbery was reported and referred to me for investigation.

I obtained witness statement from the complainant, Isaac Minta which I will tender in evidence and I commenced investigations into the matter.

A team of police officers including myself left to the crime scene at Jisonayili, a suburb of Tamale and upon reaching there, the complainant pointed at a section of the road leading to Discovery Hotel where he parked his vehicle.

A search at the crime scene discovered a pair of grey Birkenstock sandals which the complainant identified as his, and was wearing on the day of the incident.

I interrogated some residents around the area and they told me that, they heard the gun shots and run into their rooms so they could not tell what actually happened.

Later in the day, the complainant brought to the police station, a Huawei Y8P smart phone box when he was robbed. So I started tracking the phone.

On 27th May, 2022, I got an indication that the phone was switched on in a phone shop adjacent MTN building, Tamale, so I quickly went there and saw the phone with a phone repairer by name, Mike Ali who told me that the said phone was brought to him by the accused Adamu Issah who gave his contact number as 0243488402 and instructed that the phone be unlocked.

Pursuant to an order of the Tamale District Court, disclosures on the call records concerning the phone number, 0243488402 was procured from MTN which revealed the identity of the accused as the owner of the number in question. I will tender the call records of the accused in evidence.

The call records also revealed that the accused was in Tamale on the day of the incident and in the Upper East region a day after the incident, ostensibly to deliver the vehicle at the Paga border and to have same crossed over to Burkina Faso.

Police later gathered intelligence that the accused was standing trial for a similar offence at the Circuit court, Tamale so the police proceeded to the court and arrested the accused.

I interrogated the accused and obtained an investigation cautioned statement and subsequently, a further statement from him. I will tender same in evidence.

I further interrogated the accused and he led police to his place of abode at Datoyili, Tamale. A search was conducted in the accused's room in the presence of his Landlord which led to the discovery of a three-in-one Nissan vehicle seat, one (1) black single vehicle seat, one (1) black laptop bag, one (1) black HP Laptop, two (2) black pen drives, (1) Samsung mobile phone, one (1) Huawei phone, one (1) Tigo Sim card, one (1) black cap, number plat BF 6998, car key, cutter used for harvesting cocoa, wheel cup cover, two (2) head gear (fula) and a vehicle tool box.

I also found a driver's license, voter ID card, NHIS card, Ghana card, Otumfo Osei Tutu branded calendar, and a car tissue box in his room. I will tender list of the items retrieved from the accused's room as exhibit.

I took photographs of the accused together with some of the retrieved items. I will tender same in evidence.

On 20th July, 2022, an identification parade was conducted and the complainant identified the accused as one of the robbers who attacked him during the robbery incident.

The accused told me that Alhassan and Mohammed who are his accomplices gave the said vehicle to him to drive same to Paga border.

When we surfed the accused phone, an amount of GHs 118,000.00 was found in his electronic wallet and upon interrogation, the accused could not tell the police the source of the said amount of money.

When the accused was further interrogated about his income, he could not tell police how much he earned as a Tipper driver which he claimed was his occupation.

Since the accused could not account for the source of the money in question, it was suspected that the GHs 118, 000.00 found in his electronic wallet is proceeds of crime, his share of the robberies.

I obtained charged cautioned statements from the accused. I will tender same in evidence.

I also obtained statements from other witnesses which will be tendered in evidence at trial.

I subsequently volunteered a statement.

The witness tendered in evidence without objection the statement of PW1 to the police and it was marked as **exhibit A**.

The Huawei Y8P phone identified as ID1 by PW2 was also tendered in evidence without objection and it was marked as **exhibit B**.

The call records of A1 mobile phone number 0243488402 was admitted in evidence after the court ruled on objection raised to its tendering and it was marked as **exhibit C**.

The investigation cautioned statement of A1 which was obtained on 15/7/2023 was admitted in evidence without objection from Counsel for A1 and it was marked as **exhibit D**.

The tendering of a further investigation cautioned statement of A1 was objected to by Counsel for A1 and the Court ordered a mini trial on it. After the voir dire, the Court dismissed the objection and admitted the further investigation cautioned statement in evidence and it was marked as **exhibit E**.

The inventory of the items retrieved from the Accused person custody was admitted in evidence after the Court ruled on objection raised by Counsel for the 1st accused person and it was marked as **exhibit F**.

Pictures taken in the course of investigations were admitted in evidence without objection and they were marked **exhibits G, G1, G2, G3, G4, G5, G6, G7 and G8**.

The witness further tendered in evidence the money retrieved from the 1st accused person mobile phone amounting to GHs 120,000.00 after the Court had ruled on objection by Counsel for the 1st accused person and it was marked as **exhibit H**.

The 1st accused person mobile phone Samsung A32 was admitted in evidence without objection and it was marked as **exhibit J**.

The charged cautioned statement of 1st accused person was admitted in evidence without objection and it was marked as **exhibit K**.

The statement of PW2 was admitted in evidence and marked as **exhibit L** without objection.

The statement of one Yakubu Kponti was also admitted in evidence without objection and it was marked as **exhibit M**.

The witness was cross examined extensively by counsel for A1 and during cross examination the following documents were tendered through the witness without objection;

Unused mobile phones – **exhibit 1, 1A, 1B, 1C and 1D**.

Tools Box **exhibit 2**; I.D. Cards - **exhibit 3 and 3A**; Cocoa Cutter – **exhibit 4**; Car key – **exhibit 5**; Passport- **exhibit 6**; Car Seats **exhibit-7 and 7A**; Number Plate **exhibit- 8**; Headgear **exhibit -11**; Laptop bag **exhibit -12** and NHIS Card **exhibit-13**.

The prosecution closed its case after cross-examination of the witness.

On 27th February, the Court ruled that the prosecution has established a prima facie case against the accused persons and that call for the 1st accused person to open his defence if any on all the charges.

Evidence-in-Chief of A1- Adamu Issah

The 1st accused person this time told the Court that he prefer to give viva voce evidence in Twi language instead of Dagbani after the charges had been read and interpreted to him in Twi language and I hereby reproduce the entire evidence.

I am called Adamu Issah. I live at Datoyili, I am a professional Driver and I drive Tipper Truck. I also do betting. I have never been to school before.

It is not true that I have committed the offence of robbery. The mobile phone in issue was gifted to me by my friend Alhassan. Sometime ago, Alhassan caused me to go and deposit sand for somebody with my tipper truck. I deposited the sand and thereafter I met Alhassan who was then holding two mobile phones. Alhassan paid me for the sand I deposited. I jokingly asked Alhassan to gift me one of the mobile phones he was

holding. He told me that as for the two mobile phones, he is using all of them but at the right time he will gift a mobile phone to me. Sometime ago, Alhassan called me that his friend from Burkina Faso has bought a vehicle in Tamale here and he is looking for a driver to drive the vehicle for his friend from Tamale to Ouagadougou in the Republic of Burkina Faso. I told Alhassan that when they are ready, I will hand over my Tipper truck to my driver's mate and I will drive the vehicle to Ouagadougou. He told me that they have just bought the vehicle and are now in the process of registering same so I should hang around and when they are done, he will call me. In about two days' time Alhassan called me on telephone and enquired about my location. I told him I was in the house, Alhassan told me to come to Dingu Gail junction. I came there and I met Alhassan and one Mohammed I did not know.

When I came to the Gail junction, I called Alhassan with my mobile phone and he and the said Mohammed came from a drinking spot. Alhassan introduced Mohammed as his friend who had purchased the vehicle after we exchange pleasantries. They asked me how much I will take as a fee when I drive the vehicle. I told him that I have never been to Ouagadougou so until I asked someone who knows the route I cannot tell how much I will charge. He told me that the journey is about nine (9) to ten (10) hours. Alhassan told me that the journey is not beyond 10 hours so I should charge. I told them that I will take Three Thousand Ghana Cedis (GH¢3,000.00). We negotiated the charge and finally Mohammed agreed to pay me GH¢2,000.00 as the charge and also pay my transportation from Ouagadougou to Tamale when I am coming back. I was a bit hesitant to go but upon persuasion and for the fact that it was going to be a returned journey, I agreed to drive the vehicle. They told me that when they are ready with the vehicle, they will call me again, so I left with my motor bike to my house at Datoyili. In two days' time, I came to Tamale to purchase grease for my driver's mate. I met Alhassan and Mohammed at a washing Bay close to where I purchased the grease. At that time the vehicle was parked

at the washing Bay where it was being washed. I went to the vehicle and I saw that it was a Nissan Navara vehicle registered in 2017. I asked them when we will be leaving and I was told that, as early as possible the next morning. I told them that after my dawn prayer I will call but in the alternative, if they also wake up early, then they should also call me.

I moved straight to my driver's mate and informed him that I will travel early morning the next day so he should be in charge of our first trip with my car. On this same day in or around 6 pm, I purchased some items to my family house at Gurugu where a naming ceremony was going to take place the next day. Because of my inability to attend the ceremony, I purchased the items to assist them. I came back to my house and at about 5am, I woke up and prayed. There after I called Alhassan but he did not pick my calls. I used my mobile phone No.0244690988 to call Alhassan number which I cannot recall now. When he failed to respond to the call, I rode my motor bike to the house of Alhassan around 5:40 am. I saw that Mohammed had long woken up, but Alhassan was still holding his buta for morning prayers.

I was asked to park my motor bike on the veranda of Alhassan's house and pick up the vehicle which had been parked in Alhassan's house. I drove the vehicle with only Mohammed. At that time Mohammed had put water in the vehicle, we bought fuel at Dungu Goil filling station and we left. I drove the vehicle to Paga. There was no stop over. At the Ghana Burkina Faso Border at Paga, I parked the vehicle and Mohammed demanded for my driver's license to enable him prepare documents for me to be able to drive through the border. I handed over the driver's license to him and he took it away. He asked me to find something to eat. I approached a Tea Seller and requested for tea. In about 30 minutes' time, Mohammed came with another person whom he introduced as his brother who had also returned from a journey. Mohammed informed me that his brother will drive the vehicle to Ouagadougou so I should go back to Tamale.

Mohammed called Alhassan and informed him about the new development. I talked to Alhassan on the phone and he told me to come back to Tamale and that, when Mohammed get to Ouagadougou he will send me the money because he had no money on him at that time.

I agreed and after taking my tea, I left them. I sat in a vehicle and at a distance, I realized that I had not taken back my license.

I stopped the vehicle and picked a tricycle to the border. I met Mohammed and he went into the parked vehicle and he brought my license to me.

I took a vehicle from Paga to Tamale and I went home. I called Alhassan but he did not pick the call so I hired a tricycle to Alhassan's house and when I got there I picked my motor bike and proceeded to my house. On that same evening Alhassan called me and assured me that on the following day I will receive the money. In the evening of the following day, Alhassan called me and he sent One Thousand Cedis (GH¢1,000.00) by Momo to my mobile number. On the following day, Mohammed called me on WhatsApp platform but because my data was off, he made a voice note to me. I also made a voice note to him when I had data. He enquired from me whether Alhassan has given the money to me. I told him that he only gave GH¢1,000.00 to me. He told me that Alhassan called him that he has sent the remaining GH¢1,000.00 as Mohammed said. I again gave a voice note on WhatsApp to Mohammed from that time and he used to give me voice note on WhatsApp.

At this stage, The Court reminded the witness of the charges against him as well as the evidence that has been led against him to enable him respond to same.

One day I was in the house when Alhassan called me that somebody was in need of gravels and that I should visit the site so I can use my tipper truck to convey the gravels to the site. Around 4pm I called Alhassan on his phone and he directed me to come to

the road side. He met me and he took me to the site of the person who was in need of the gravels.

I negotiated with the person and thereafter Alhassan took me to his house. After greeting his wife, Alhassan went to his room and brought a mobile phone in issue to me. Alhassan told me that the mobile phone was being used by his wife but he has bought another one for her so I should take this phone as a gift since I requested for mobile phone from him.

By Court: The witness has identified exhibit B as the mobile phone Alhassan allegedly gifted to him in court.

The phone had been switched on and it had no password to unlock it. It had no image or information. Whatsoever indicating that the mobile phone was for someone. I took the phone and thanked him. I left with the phone to my house.

I inserted a chip in the mobile phone (exhibit "B") but I realized that the mobile phone had a Google account. I called Alhassan and demanded the Google account password and he told me that he cannot recall the password since it is a longtime. He asked me if I can get someone to unlock the password for me, I should go ahead to do that. The following day I took exhibit B to one Haruna at Datoyili to try and remove the password on the phone but he could not do it so, he told me that, unless the use of a computer, unlocking it will not be possible. Whilst on my way to Tamale to get it removed, Alhassan called me that if I am not successful in unlocking, I should meet him at Lamashegu Roundabout for him to try if he could remember the password. We met but he could not recall the password, so I took him on my motorbike as pillion rider and we came to Mike Phone Repair Shop and I gave the phone in issue to him as well as my wife phone that had its screen smashed to unlock and repair respectively. The phone repairer who is PW2 asked me to take a receipt and rather come later in the day to pick the mobile phone in issue because unlocking it will take some time. I asked the cost and he told me it will cost

me GH¢70.00 to unlock. Mike gave the phone to me and I gave it to one of his workers who was in charge of receipts and she issued out a receipt for me. I told Mike that it is likely that I will travel in the night that day, so if I am unable to come for the mobile phone, Alhassan will pick it for me. At that time they wrote Alhassan name on the receipt for collection of the mobile phone but Alhassan told me that he is also likely not to be available because his motorbike was not available. That made me give my details by way of my telephone number to Mike and the workers and that is how come my details were on exhibit B and on the receipt. Because Mike was going to pick his children from school, I did not wait to collect my wife damaged screen phone which Mike said he could replace in about 30minutes time. Alhassan and I left. My plan of going to Kumasi with my brother in the night did not come on, but I also did not hear from Mike the phone repairer. It was the following day in the morning that I went to Mike and took my wife phone from him. As for the other phone gifted to me, he had not finished working on it so I left with the promise from Mike that, he will call me to pick it when he is done with the unlocking. At about 4pm Mike called me that I should come and pick the phone because he could not unlock the phone. I could not go that same day because I was packing some blocks and was busy. He pestered me with calls the following day to come for the phone. I called Alhassan to go for it for me but he also told me that he was at a distance and cannot go. I told Mike that I was busy and will come later in the day to pick it, but even if I am unable to pick it, my friend Alhassan will do so on my behalf. Mike asked me whether I trust Alhassan and I said that I trust him so he can come for it. Alhassan told me on phone when I called him that he has gone to Mike place to collect exhibit "B". He added that Mike could not unlock the phone. He told me that he has called the boy who created the Google account on the phone for him to come and assist in unlocking. From that time, Mike did not call me again and I also did not call him because I was with the impression that Alhassan had gone for the phone. I did not follow up on the phone till I was arrested at the premises of the court on this case. I was sent to the Regional Commanders Office

and the police showed a mobile phone cover box to me and asked me the owner thereof. I told the police that I do not know the owner. They asked me about my password on my mobile number and I gave my two personal numbers to the police as 0244690988 and 0243488402. The box was opened and exhibit B was brought out and I was confronted with it. I told the police that exhibit B was gifted to me by Alhassan. He then asked why I said I did not know anything about the phone when I knew that it was gifted to me. I told the police that, at that time I did not know the contents of the mobile phone box and I could not have gone further. They asked me the where about of Alhassan and I told the police that he is in Tamale and I showed the police his house at Kasaligu. I gave Alhassan number to the police so at that time, the Regional Commander told the police to take me to my house to conduct a search in my house and I was kept in the custody of one of them at a distance to my house and the rest of the police proceeded to my house leaving about 3 of the officers with me in the car. I showed the police my rooms and they proceeded to my rooms but whatever happened in there, I did not witness. At that time too none of my wives was present. The police brought me back to the office of the Regional Commander after the search. The police dropped the items which have been admitted in evidence there. There was no pen drives in the items. It was on the instructions of the Regional Crime Officer that, the investigator should right there take my investigation cautioned statement. There were two police officer called madam Mercy and madam Florence present and they offered to do the interpretation for me. They asked me the language I prefer to speak and I told them that I speak Twi and Dagbani language and I will be comfortable if any of them is used. The CID man said since all of them understood Twi language I should use Twi language in giving the statement. He asked me where I got the mobile phone in issue and I told him that it was Alhassan who gifted it to me. At that time, the Regional Crime officer said that, I was going to lie so they should invite inspector Abu to come. He came there and stood behind me. The Regional Crime Officer told the investigator to write anything he wants because for him I am a criminal. What I

said is not what was recorded for me but rather whatever they liked was what they recorded. After writing my statement I thumb printed same because I had no option because Abu was standing there and due to the fact that he assaulted me in January and I was hospitalized, I was afraid of him. What I was forced to thumb print on the 15/07/2022 is not what I told the police.

The Laptop was not found in my custody. When I was arrested I was detained. It was about three weeks after my arrest that I was brought to the CID office in presence of the Regional Crime officer, the Regional Commander and the CIDs in all my cases. When I entered, I saw the laptop in issue together with a number plate of a vehicle placed on my three in one vehicle seat. That number plate had been shown to me on 15th July, 2022 and I denied ownership of it and also told the police that I do not know anything about the number plate. That on the same 15th July, 2022, the police came to my cells and moved me out in the night threatening that if I do not tell them the truth about the number plate they will kill me. I was afraid and I lied to them that, the number plate belongs to Kamaldeen Alhassan.

On the laptop issue, I denied ownership of it but the Regional Commander of police was standing behind me and holding the police big phone. He used it to hit me hard at my back. He commanded the police to move me to his office and they obeyed. He asked them to bring the police guys to his office and lo and behold Abu the fearful police officer came there because I was in fear, I admitted owning the laptop in issue now. I also admitted owning the number plate. That at the time my second statement was being taken, CID Atsu who is my investigator in my other robbery case was present. The CID in this case Salah was also present and some other police men as well as the Regional Crime Officer were all present. The independent witness was not present when my 2nd statement was being taken. It was after my statement had been taken that he appeared.

The police asked him why he has delayed in coming and he told them that he was on his motorbike and he did not hear the call.

On 15th July 2022 around 6 pm I took the police to A2's house for his arrest because he gifted the mobile phone of the complainant to me. Whilst in the police vehicle around Alhassan's house, I saw Alhassan (A2) three wives all in his house. The police did not enter A2's house but rather they turned the vehicle we were in and the brought me to the cells. It was two days after my arrest in this case that is 15th July 2022, that the investigator came to me and confronted me with the two pen drives in evidence. I told them that I do not know anything about the pen drives. Kamaldeen Alhassan was also arrested and brought to the Regional commander's office. They asked him whether he knows me and he confirmed that he knows me at DVLA where he works, he told the police that he got to know me because there were times that I accompanied others to get their vehicles registered. He denied that he has given me a number plate, he was released that same evening and he left. I was brought to Sagnarigu police station where I saw many people there. I was made to sit on the corridor of the police station so that I can be identified early by anybody. The police brought in some people in a pickup and paraded me with them for police identification parade. All those present which I met whilst coming to the police station pointed me out. It was only one person who did not identify me. The police investigator in my other case took me out to write further statement from me. I have not committed any offence for me to be punished. It appears to me that, the police have deliberately brought me to court because they found out that I have over GH¢100,000.00 on my mobile phone which is a proceed from betting that I won.

That is the end of my evidence in chief.

The 1st accused person was cross-examined thereafter.

Evidence of DW1- Musah Mahamudu

The 1st witness of the 1st Accused person was his family member and his short evidence is as follows:

I am called Musah Mahamudu. I live at Gurugu a suburb of Tamale. I know A1, he is my senior brother's son. On 9/05/2022, we were having wedding at Gurugu in Tamale. A1 came to the wedding ground with a bag of rice and cooking oil as well as a new piece of cloth. That is all I know.

The witness was cross-examined thereafter.

Evidence of DW2- Amina Abdul Rahaman

The unsworn evidence of DW2 who is a child is that;

I am called Amina Abdul Rahaman. I live at Gurugu a suburb of Tamale. I was living at Datoyile before I moved to Gurugu. I know A1. He is married to my elder sister Sadia Abdul Rahaman. Whilst in the house A1 was brought to the house by the police. At that time I had locked the rooms and the keys were with me. The police asked me to bring the keys, I did not personally see A1. They collected the keys from me and opened three (3) rooms. My sister's room that is A1 wife; A1 room and the room of the A1 first wife called Latifa Yahaya. They searched the rooms and they found a bag and they took it away. At the time the police came to the house I was there alone. After this day the police came back to the house on the second appearance in the house there were a lot of people in the house. The police again entered the rooms and searched the rooms. I did not go inside the room with the Police.

By Court: The witness has identified exhibit G as a picture that was taken at the time the police came to the house for the second time.

The witness was cross-examined.

The 1st accused person closed his case.

The Law on conspiracy

The law creating the inchoate offence of conspiracy to commit crime which was codified under section 23 (1) of the Criminal Offences Act 1960 (Act 29) has been revised in 1998 by (Act 562) and the revised law states as follows;

“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.”

By this definition, the nature and scope of the offence of conspiracy as existed in Section 23 (1) of Act 29 has changed. Now the accused persons must agree to act together to either commit or abet a crime in order for the offence of conspiracy to be made out. This means that in order to succeed in proving the offence of conspiracy, the prosecution must prove that there was a prior agreement between or among the accused persons to act together for the purpose of committing or abetting the crime.

See the case of **SGT JOHN AGYAPONG v THE REPUBLIC [2015] DLCA 8053**

In the case of **FRANCIS YIRENKYI v THE REPUBLIC [2016] DLSC 3148** the Supreme Court affirmed the new definition of conspiracy to be an intentional conduct.

Thus under the new formulation, a person could no longer be guilty of conspiracy in the absence of any prior agreement.

The elements of the offence of conspiracy under the new law is as follows:

- a) *That there were at least two or more persons.*

- b) *That there was agreement to act together.*
- c) *That the sole purpose for the agreement to act together was for a common purpose to commit crime or abet a crime.*

See the cases of; **RICHARD KWABENA ASIAMAHA v THE REPUBLIC [2020] 170 GMJ 510 SC**

KINGSLEY AMANKWAH (ALIAS SPIDER) v THE REPUBLIC [2021] 173 GMJ 230 SC

It must be noted that in a criminal enterprise it is very difficult 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.

See **AKILU v THE REPUBLIC (J3 8 of 2013) [2017] GHASC 11 (5 July 2017) per APAU JSC as he then was.**

The law recognize the fact that in most cases it is difficult to get accused persons in flagrante delicto in committing crimes. The law therefore allows trial courts to draw inferences from sets of facts in order to come to a logical conclusion.

Section 18 (2) of the Evidence Act 1973 (NRCD 323) is one of such provisions of the law on inference and it is provided as follows;

“An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts found or otherwise established in the action.”

It is important to note that these laws have been enacted such as to deal with crimes which are in most cases committed under the cloak of darkness so as to unravel the perpetrators

of crime. There is therefore the need to make inferences from proven facts where there exist no direct evidence on the commission of the crime.

The Law on the offence of Robbery

I will now proceed to discuss the offence of robbery as created by Section 149 of Act 29 as amended and set out the elements of the offence in the definition section of the Act before I delve into the analysis of the evidence before me.

Section 149 of Criminal Offences Act 1960 (Act 29) as amended states as follows;

“A person who commits robbery commits a first degree felony”.

Section 150 of Criminal Offences Act 1960 (Act 29) as amended is the definition section of the offence of robbery and it is provided as follows;

“A person who steals a thing commits robbery

- (a) if in, and for the purpose of stealing the thing, that 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 the resistance of the other person to the stealing of the things.”*

By this definition one is guilty of the offence of robbery if in stealing a thing, the accused person uses force, threat of criminal assault or harm with intent to prevent or overcome the resistance of other person to the stealing of the thing. The definition of the offence of robbery was pronounced in the case of **BEHOME v THE REPUBLIC [1979] GLR 122** where it was 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 intent thereby to prevent or overcome the resistance of his victims, to the stealing of the thing.”

Flowing from the definition of robbery, the court in the case of **FRIMPONG ALIAS IBOMAN v REPUBLIC supra held** that for the prosecution to succeed on the offence of robbery, the prosecution must prove beyond reasonable doubt the following elements;

1. *The accused has stolen something from the victim of the robbery of which he is not the owner.*
2. *For the purposes of the stealing, the accused person used force, harm or threat of any criminal assault on the person.*
3. *The force or the threat of criminal assault or harm used must be with the intent to prevent or overcome the resistance of any person to the stealing of the thing.*
4. *This fear of violence must either be of personal violence to the person robbed or to any member of his household or family in a restrictive sense.*
5. *The thing stolen must be in the presence of the person threatened.*

In order to be successful in proving the offence charged, the prosecution must lead cogent evidence to prove each of the ingredients making the offence beyond reasonable doubt in order to establish a prima facie case for the accused persons to open their defence as stated supra. A prima facie case at the close of the prosecution case does not mean conviction. It means that barring any defence from the accused persons to raise reasonable doubt, the Court will convict the accused persons. I will proceed to find out whether the elements as stated supra were proved beyond doubt by the prosecution in the case before me.

Legal Analysis

Counsel for the 1st accused person in his written submission urged this Court to hold that, by charging the accused persons under the old section 149 of Act 29, instead of the amended provision, substantial miscarriage of justice has been occasioned and for which reason the accused persons are to be acquitted and discharged without going into the merits of the case.

I see this submission on this omission on the part of the prosecution to add the word as amended to count two as a mere technicality and has not occasioned any substantial miscarriage of justice. In fact this technical error of not adding the word as amended does not go into the substance of the case and has not occasioned any substantial miscarriage of justice.

I must remind myself of the provisions of section 406 (1) (a) of Act 30 which caution on the use of technicalities that do not occasion substantial miscarriage of justice to set aside convictions of trial judges. Although this case is not an appeal, the provisions therein are applicable.

“... no finding, sentence, or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or review on account.

(a) Of error, omission, or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment, or any other proceedings before or during the trial or in any inquiry or any other proceedings under this Act or unless such error, omission, irregularity or misdirection has in fact occasioned a substantial miscarriage of justice.”

Similar provision finds its way in **sections 31 (2) of the Courts Acts 1993, (Act 459)** and I hereby reproduce same.

“The appellate court shall dismiss the appeal if it considers that a substantial miscarriage of justice has not actually occurred or that the point raised in the appeal consists of a technicality or procedural error or a defect in the charge or indictment but that there is evidence to support the offence alleged in the statement of offence in the charge or indictment or any other offence of which the accused could have been convicted on that charge or indictment.”

I hereby hold that the submission of learned Counsel for the 1st accused person is technical in nature and does not defeat the substance of the charge under section 112 (1) of Act 30 and Article 19 (2) (d) of the 1992 constitution of Ghana. The relevant sections were quoted only that those sections have been revised by Act 562 in 1998.

In a case of this nature where A1 claims that he was not at the scene of crime and did not take part in the robbery, the prosecution must lead evidence to show that indeed A1 was at the scene of crime and actually took part in the robbery with A2 as his accomplice. The roles played by A1 and A2 in the robbery must clearly be established by cogent evidence. The prosecution must prove beyond reasonable doubt that A1 and A2 were participes criminis.

The evidence of A1 is that, he was not at the scene of crime on the night of the robbery on 9th May, 2022 but rather in his house at Datoyili. A1 counsel spent considerable time on the identity of A1 and held the position that A1 was not at the scene of the crime. He described the identification parade as a sham and edged the court not to rely on the description of PW1 to robe A1 in the commission of the crime.

It is however intriguing as to why A1 did not file any notice of alibi under section 131 of Act 30 for the Court to call for full investigations into the claim. That notwithstanding, it is the prosecution who bears the burden of proof to establish by evidence that A1 took part in the robbery and A2 was his accomplice. This call is at the heart of the prosecution

case because A1 has put up a challenge on his identity as *participes criminis* hence the need for evidence to establish the fact that he was at the scene of crime and actually took part in the robbery.

Identity of A1 as Participes Criminis

The position of the law is that where the identity of an accused person is in issue in the course of the trial, the judge must carefully scrutinize the evidence and be guided by certain factors in arriving at a conclusion in one way or the other. It is also my duty to find out whether those factors can assist the Court to make inferences that the description actually point to only the accused persons as those who committed the offence.

In RAZAK AND ANOR V THE REPUBLIC (J3 6 of 2011) delivered on 25th April 2012

the Supreme Court delivered itself on the factors to be considered in order to avert mistaken identity as follows:

“In every criminal trial it is not only necessary for the prosecution to prove the commission of the crime, but also to lead evidence to identify the accused as the person(s) who committed it. That was of a very crucial importance for a proven case of mistaken identity is a good ground for reversing a conviction for a crime on appeal. Thus where the ground of appeal bothers on mistaken identity, a trial or appellate Court ought to carefully examine the evidence on it. A judge is to guide himself by considering factors such as the period of time over which the witness saw or observed the accused (appellants in this appeal), the conditions in which the observation was made, whether or not the area or vicinity was lit to make the observation possible, the distance between the witnesses and the appellants, or whether or not the description by the prosecution witnesses agreed with that of the appellant(s). On this see the guidelines by Lord Widgery CJ in R v Turnbull [1977] QB 224. The identification may take various forms. In “Phipson on Evidence” (10th ed.) p 170 paragraph 1381, it is stated: ‘When a party’s identity with an ascertained person is in issue,

it may be proved or disproved not only by direct testimony, or opinion evidence, but presumptively by similarity or dissimilarity of personal characteristics: e.g. age, height, size, hair, complexion, voice, handwriting, manner, dress, distinctive marks, faculties, or peculiarities including blood group, as well as of residence, occupation, family relationship, education, travel, religion, knowledge of particular people, places, or facts, and other details of personal history”

I must now find out whether the evidence before me points to this irresistible conclusion that it was the accused persons who were at the scene of crime and who actually robbed the complainant (PW1) of his service vehicle, mobile phone and other items on the day of the robbery.

The evidence of PW1 against 1st accused person is a direct evidence linking him to the crime. PW1 claimed in his evidence-in-chief that two men one slim and the other fat attacked him on the night of the robbery with AK 47 assault rifle. That he was pulled out of the vehicle amidst firing of gunshots in the air and they bolted with the vehicle.

PW1 further stated that an identification parade was conducted after the arrest of A1 and he was able to point A1 out as one of the men who robbed him. In cross-examination of PW1 by counsel for A1, the answers given by PW1 further gave vivid description of the accused persons and PW1 insisted on seeing A1 as one of the robbers who attacked him. I hereby set out some of the exchanges;

Q: In your Police statement during the investigation you never mentioned that you could identify those who attacked you?

A: I said that those who attacked me were two males, one is slim and the other fat.

Q: Per your own Police statement you only described those who attacked you by body structure simpliciter?

A: What I stated earlier is what I told the Police.

Q: *Tell the Court the attire of the two guys who attacked you on the said day were wearing.*

A: *The fat one was wearing smock, the slim one was wearing an overall attire.*

Q: *Tell the Court the colours of the attire?*

A: *At that time, I saw them as dark colours.*

Q: *You will agree with me that per your statement the attackers fired several warning shot.*

A: *I only heard one shot.*

Q: *From the statement to the Police taken on 10th May, 2022, you alleged that there was firing by your attackers, what do you say about that?*

A: *Yes, they fired in the air.*

Q: *Per your account, you run and left your slippers behind, what do you say about that?*

A: *Yes.*

Q: *You were in a state of fear when you were attacked by the armed men amidst firing?*

A: *Yes.*

Q: *I am suggesting to you that in that state of fear you could not have identified those who attacked you?*

A: *When I heard the warning shot, the fat guy came close to my door and said get down, get down. The other guy also came to the other door, passenger door of the front seat and I saw them. (Emphasis supplied).*

Q: *I am suggesting to you that if you indeed saw your attackers you would have informed the Police for that to be included in your statement.*

A: *That is why I described them to the Police in that manner in my statement. That one is fat and the other slim.*

From these exchanges, it is clear that PW1 saw his attackers and further gave account as to how they looked like. PW1 further identified A1 in an identification parade as one of those who attacked him. The evidence of PW1 was not discredited by cross examination by counsel for A1 and I have no reason to reject same. Again, the description given by PW1 in his evidence in chief and his answers in cross examination reveal that, he saw his attackers and made A1 out in the identification parade.

In answering the last question posed by counsel for A1 in cross examination, PW1 insisted that A1 was among those who attacked him and took away his vehicle. Hear him;

Q: I suggest to you that you misidentified the accused person because he was not at the scene of the crime at that time.

A: He was among those who attacked me.

The evidence of PW1 identifying A1 in the identification parade mounted by the police was not challenged by A1. In fact A1 in cross-examination corroborated that piece of evidence of PW1 that there was an identification parade and, PW1 identified him.

Q: I am putting it to you that the first time PW1- (complainant) and other persons made you out was at the identification parade.

A: Yes, but I met them on that same day of the identification parade at Sagnarigu police station.

Again A1 was not consistent with his evidence that he was exposed to PW1 on the day of the identification parade. A1 later changed that piece of evidence and proffered that the prosecution exposed him to PW1 in court before the identification parade was conducted. The inconsistencies in the evidence of A1 makes his assertion not worthy of credit.

There is credible evidence that PW1 saw A1 as one of the people who attacked him and robbed him of the vehicle.

The law is that where the identity of the accused is in doubt there is no better proof of identity than the one who swears to have seen him commit the offence.

See the case of **ADU BOAHEN v THE REPUBLIC [1972] 1 GLR 70 CA which was cited in the case of PROSPER AMESHINU v THE REPUBLIC [2010] DLCA 7470 Delivered on 2010-07-22.**

“Where the identity of an accused person is in issue there can be no better proof of his identity than the evidence of a witness who swears to have seen the accused committing the offence charged. Dicta of Viscount Haldane L C in Reg vrs Christie [1914] AC”.

I must add that, aside the direct evidence of seeing A1 as one of the armed robbers, there are pieces of evidence on record when put together point to irresistible conclusion that A1 and A2 were involved in the commission of the crime of robbery.

The law recognizes circumstantial evidence in the absence of direct evidence in the commission of crime. Aside the direct evidence of PW1 linking A1 to the commission of the crime, there are other pieces of evidence on record that point to irresistible conclusion that A1 and A2 planned together and robbed PW1 of the Toyota Hilux Pick-Up.

In the first place, exhibit B (the mobile phone of PW1) which was in the vehicle robbed was found in the possession of A1 days after the robbery. A1 explained that it was A2 who gifted exhibit B to him in the 2nd accused person house. The 1st accused person admitted in his evidence in chief that he sent exhibit B to the shop of PW2 to get the password on exhibit B removed to enable him use exhibit B. A1 further identified exhibit B in court as the mobile phone he sent to PW2 for the password to be removed. A1 admitted that exhibit B was in his custody and he took it to PW2 shop for him to unlock

the phone. The undeniable fact is that exhibit B is the property of PW1 and not property of A2 to be gifted to A1 in A2 house. In fact PW1 identified exhibit B as his mobile phone and there was no denial of this fact by A1. PW1 further proved ownership when he provided the police with the box exhibit B was in when he purchased same. A1 in his evidence admitted seeing the box when the police showed it to him to identify. The explanation given by A1 on how he came by exhibit B has been found to be conflicting by this Court and not reliable. As at now A1 has not been able to give credible evidence as to how the robbed mobile phone came into his possession.

The question that is begging for answer is why did A1 give A2's name to PW2 as his identity to be placed on exhibit B and not his own name? Was it to conceal A1 identity after he alleged that A2 warned him that exhibit B will lead to his arrest? The evidence of A1 on record concerning how he came into possession of exhibit B is conflicting and manifestly unreliable as pronounced supra. In A1 investigation cautioned statement to the police A1 stated in part as follows:

"On 10/05/022, at about 4:00 am Alhassan called me to meet him at Customs Officers junction located at Datoyili. When I went there I met Alhassan and Mohammed with a black Toyota Hilux Pick up, in the vehicle there was a black Huawei Y8P Smart phone which they wanted to throw away but I told them I need it and Alhassan gave the mobile phone to me..."(Emphasis mine)

The 1st accused person evidence on how he came by exhibit B changed when he mounted the witness box and stated that A2 gave exhibit B to him from his (A2) room. Here him;

"I negotiated with the person and thereafter Alhassan took me to his house. After greeting his wife, Alhassan went to his room and brought a mobile phone in issue to me. Alhassan told me that the mobile phone was being used by his wife but he has bought another one for her so I should take this phone as a gift since I requested for mobile phone from him."

How can exhibit B which was given to A1 in the black Toyota Hilux Pick-Up vehicle be the same exhibit gifted to A1 by A2 from the house of A2? The two accounts are not reconcilable and I hereby reject same.

I have no iota of doubt that A1 used A2's name on exhibit B to conceal his identity knowing very well that the mobile phone was a stolen property in the vehicle that was robbed and thereby could lead to his arrest. The conduct of A1 of not going for exhibit B from PW2 after several calls lead credence to the fact that he was afraid of his arrest. The 1st accused person explanation that he thought A2 had gone for it is a make up story.

The unchallenged evidence of PW2 is that;

“On the 26th day of May, 2022, at about 2:30pm, I was in my shop which is located adjacent the MTN building when one man who alleged he is called Alhassan brought in Huawei Y8P smart phone for me to unlock for him.”

This piece of evidence was not denied by A1 counsel in cross-examination. Rather A1 affirmed this evidence of PW2 in his evidence in chief that he used A2's name on the phone. This means that A1 used the name of A2 in giving out the mobile phone for the unlocking when A2 was not there at the time. In his investigation cautioned statement exhibit D, A1 claimed that A2 and one Mohammed wanted to throw exhibit B away but he took it. This account of A1 in exhibit D sharply contradicts his evidence-in-chief on how he came by exhibit B. It also contradicts A1 evidence that he went to the shop of PW2 with A2 for the unlocking of the phone. How can A2 give the password of a phone which is not his property to A1 or PW2 for it to be unlocked? Remember A1 claims that A2 had warned him that exhibit B could lead to his arrest. Again, PW2 evidence did not make any reference to A2 coming into his shop with A1. PW2 evidence does not suggest that A1 came with A2 to his shop on 20/05/2022 as well as on 27/05/2022. PW2 entire evidence in chief stands unchallenged by A1 in cross examination.

The position of the law is that, when a party or his witness has given evidence of a material fact and his opponent fails to cross-examine him whilst in the witness box and had opportunity to react to his opponent case, the court should not attach much weight to the evidence of that party which he give later on that particular issue after the party or his witness has left the witness box.

See FORI v AYIREBI [1966] GLR 627 SC.

A1 counsel failed to cross examine PW2 on how A1 came to the shop and gave his name as Alhassan and subsequently came back the following day with another phone to be repaired. I will therefore not place any probative value on A1 sworn evidence that he went to the shop of PW2 with A2 and due to the fact that he (A1) wanted A2 to collect the phone after unlocking for him, he gave the name of A2 to PW2 to record on the phone as a clear case of afterthought. After all, at the time A1 was sending the phone to PW2, per his own account in exhibit D, he knew that the mobile phone was stolen in the course of the robbery as he had been cautioned by A2. I hereby reject the evidence of A1 that, A2 gave exhibit B to him in A2's house days after he had driven the vehicle to Paga. The investigation cautioned statement of A1 (exhibit B) which was admitted in evidence without objection and duly thumb-printed by A1 account on how A1 came by the mobile phone sharply contradict his evidence on oath. A1 has not given any tangible explanation as to the inconsistencies in his sworn evidence and his investigation cautioned statement.

The position of the law is that a witness whose evidence on oath is contradictory of a previous statement made by him whether sworn or unsworn, is not worthy of credit.

See STATE v OTCHERE [1963] 2GLR 463

BOUR v STATE [1965] GLR 1 SC

The fact that the properties that were robbed found their way in the possession of A1 and A2 after the robbery attack on PW1 to dispossess him of his official vehicle and his mobile phone (exhibit B) together with the evidence of PW1 and PW2 establish a prima facie case that A1 and A2 were involved in the robbery and barren any reasonable explanation, from them, this court will convict them of the offence of conspiracy to rob. The prosecution has discharged the burden of proof that A1 and A2 took part in the robbery on 9th May, 2022.

Again, there is evidence on record that A1 drove the robbed vehicle from Tamale to Paga five hours after the robbery on 9/5/2022 at 10pm or thereabout. A1 in his investigation cautioned statement obtained on 15/07/2022 gave account on the vehicle he drove to Paga. I hereby quote the relevant portion;

“On 10/05/2022, at about 4:00 am Alhassan called me to meet him at the Customs Officer junction located at Datoyili. When I went there I met Alhassan and Mohammed with a Black Toyota Hilux Pick-Up. In the vehicle there was a black Huawei Y8P smart phone which they wanted to throw away but I told that (sic) I need it and Alhassan gave the mobile phone to me. After that Alhassan then handed over the vehicle to me with Mohammed on board. I drove the vehicle from Datoyili through the magazine road to Kumbungu. I turned to Savalugu and took Bolga road straight to Paga border and handed over the vehicle to Mohammed who crossed the border with it to Burkina Faso.”(Emphasis supplied)

However in A1’s viva voce evidence in Court, this is what he said about the vehicle he drove to Paga border at the instance of A2 and Mohammed;

“In two days’ time, I came to Tamale to purchase grease for my driver’s mate. I met Alhassan and Mohammed at a washing bay close to where I purchased the grease. At that time the vehicle was parked at the washing bay where it was being washed. I went to the vehicle and I saw that it was a Nissan Navara vehicle registered in 2017”. (Emphasis mine)

In cross examination, A1 repeated that the vehicle he drove to Paga on 10/05/2022 was not Toyota Hilux Pick Up. Here him.

Q: *I put it to you that the vehicle you robbed and drove to Paga was black Toyota pickup.*

A: *Not correct I have not conspired to rob any vehicle. The vehicle I drove to Paga was Navara vehicle and not Toyota. (Emphasis supplied).*

Meanwhile in exhibit D, A1 admitted driving the Toyota Hilux Pick-Up that was in possession of PW1 on 9/05/2022 at 9:30 pm or thereabout some hours after the robbery. In order to conceal the fact that A1 knew of the robbery incident from the court, A1 was not truthful to the court on oath that, the vehicle he drove to Paga was not a Toyota Hilux Pick-Up vehicle (the robbed vehicle) but rather Nissan Navara 2017 Pick-up vehicle.

The two statements proffered by A1 on the type of vehicle he drove to Paga on the dawn of 10/05/2022 are contradictory and once again no tangible explanation has been given by A1 about the contradiction. As stated supra, such a witness is not worthy of credit on that piece of evidence. I will rather prefer the documentary evidence of A1 and endorsed by him as in exhibit D on the type of vehicle he drove to Paga rather than the sworn evidence in court. I see the sworn evidence on this issue about the vehicle as a clear case of afterthought to deceive the court and I hereby reject same.

Again, A1 in cross examination denied that PW1 mobile phone (exhibit B) was in the robbed vehicle when he drove it from Tamale to Paga border contrary to his assertion in his own investigation cautioned statement to the police. Hear A1 in cross-examination.

Q: *I put it to you that the vehicle you drove contained PW1's phone exhibit B*

A: *Not correct. There was no mobile phone in the car.*

The answer given by A1 supra sharply contradict his investigation cautioned statement and I hereby quote the relevant portion;

“In the vehicle there was a black Huawei Y8P smart phone which they wanted to throw away but I told that (sic) I need it and Alhassan gave the mobile phone to me”.

These contradictory statements of A1 as to where he saw exhibit B and how he got it leads credence to the prosecution case that A1 was participes criminis and if not, how come A1 made a categorical statement that exhibit B was not in the robbed vehicle when indeed he informed the police in exhibit D that PW1 mobile phone was in the vehicle he drove to Paga.

I hereby make a finding of fact that exhibit B was in the robbed vehicle to the knowledge of A1 and A2 at the time of the robbery.

In the investigation cautioned statement of A1 he alleged that A2 and one Mohammed contracted him to drive a vehicle to Ouagadougou and that Mohammed, A2 and himself met on 8th May, 2022 where A2 told him that the vehicle he will drive to Paga was going to be a Toyota Prado or Toyota Hilux vehicle. If this statement is true then it means that as at 8th May, 2023 a day before the robbery, no vehicle had been purchased by Mohammed for A1 to know that it was a Nissan Navara 2017 Pick-Up vehicle being washed at a washing bay as claimed in his sworn evidence.

This piece of evidence is in sharp contrast with A1 viva voce evidence that A2 informed him that his friend Mohammed had purchased a vehicle and he wants A1 to drive to Ouagadougou in Burkina Faso and that he saw the vehicle parked at washing bay and it was a 2017 Nissan Navara Pick-Up. I reject the contradictory evidence of the purported purchase of vehicle for A1 to drive to Paga as a make up story of A1 to extricate him from the robbery that took place on 9/5/2022.

Let me hasten to add that, A1 in his investigation cautioned statement further told the police that on 14/06/2022 he met A2 at Datoyili Junction and A2 told him to be monitoring vehicles such as Toyota Land Cruiser Prado parked at UDS Junction. That he took picture

of the said Prado on his phone and sent it to A2 for the vehicle to be robbed. That they could not rob that vehicle because A2 travelled on the planned date of the robbery. The said Land Cruiser Prado picture was found on A1 mobile phone when same was opened in court. A1 admitted in cross examination that he had such a picture on his mobile phone. Though this piece of evidence of A1 came after the robbery in this case, I have raised it to buttress the point that A1 and A2 were in the business of robbing people's vehicle and it was not by sheer coincidence that A2 allegedly contracted A1 to drive the robbed vehicle to Paga for a fee.

From the pieces of evidence before me, exhibit B connects A1 and A2 to the crime of robbery and I so hold that A1 and A2 were at the scene of crime on 9/05/2025 purposely to rob PW1 of his official vehicle and they succeeded in that criminal enterprise.

Another intriguing fact that connect A1 and A2 to the crime is from the call records of A1 mobile phone numbers 0243488402 and 0244690988 which were marked as exhibit C and N respectively. In his evidence in chief, A1 gave A2 mobile phone number he communicates with him as 0246931121.

The claim of A1 is that he called A2 on 10/05/2022 at dawn with his mobile phone but A2 did not pick the call and that compelled him to go to the 2nd accused person house to pick the vehicle. The call records of A1 on 10/05/2022 did not show any evidence of A1 calling A2 at that dawn or morning as he claimed. This piece of evidence rather expose the 1st accused person defence and makes it manifestly unreliable. The contradictions cannot be grossed over by this Court as the documentary evidence on the call records does not support A1 viva voce sworn evidence in court on 24/03/2023. In cross examination of A1 the following ensued:

Q: You are on record of saying that on the day you travelled to Paga with the pickup, you called Alhassan (A2) is that not your case.

A: *Yes, I called A2 on two occasions in the morning but he did not pick my call.*

Q: *You are on record of saying that when A2 failed to pick your call you rode your motor bike to A2's house at about 5: 40 am.*

A: *Yes, I said it.*

Q: *You agree with me that your alleged call to Alhassan was before 5:40 am.*

A: *Yes, but I did not look at the time then.*

Q: *I am putting it to you that you did not call A2 or visit his house on the day you drove the Pick-up that is 10th May 2022.*

A: *I called him and when he failed to answer my call, I visited him in his house.*

Q: *You claim to have called A2 on 10/05/2022 with number 0244690988.*

A: *I called A2 with my number 0244690988.*

Q: *Have a look at this document and tell the court if that is you call records with your telephone number 0244690988.*

A: *Yes, that is my call records.*

Q: *Have a look at exhibit N your call records and tell the court where you called A2 on 10/5/2022 before 5:40 am.*

A: *A2's number I called is not in exhibit N. He did not pick my call so I do not know if missed calls have search records.*

The answers given by A1 contradict the contents of exhibit N since there was no call records of A1 mobile phone number 0244690988 to A2 number 0246931121 on 10/05/2022 as evidenced in exhibit N (*The call records of A1 mobile phone number 0244690988 procured from MTN from 01/01/2022 to 10/08/2022*).

Again on the same 10/05/2022 there was no call record of A1 other mobile phone number 0243488402 to A2 mobile phone number 0246931121 as evidenced by exhibit C (*The call records of A1 mobile phone number 024388402 procured from MTN from 01/04/2022 to 24/06/2022*).

These contradictions are not mere slips or immaterial. They go into the root of the evidence of A1 which if they were to be true could have raised reasonable doubts in the prosecution case. I therefore find that the evidence of A1 to the effect that, on the day he drove the vehicle to Paga he called A2 two times with his mobile phone number 0244690988 as untrue. Technology on call records and transactions on mobile telephony have far advanced such that all call records made are traceable whether received or missed hence exhibit C and N. The fact that there are no such call records of A1 to A2 in exhibit N on 10/05/2022 makes A1 assertion unfounded and I hereby reject same.

Again A1 investigation cautioned statement (exhibit D) reveals that A1 did not go to A2's house at dawn of 10/05/2022 ostensibly to pick the alleged purchased vehicle in A2 house. Rather A1 claim he met A2 and Mohammed at a filling station after A2 called him at 4am on 10/05/2022 and they gave the Toyota Hilux Pick-Up vehicle to him and he drove it to Paga with Mohammed on board. If indeed A2 called A1 on his mobile phone, exhibit N and exhibit C would have had that call record but there in none on the said day from A1 mobile phones.

Again, the evidence of 1A that on 11/05/2022 he received GHs 1,000.00 MTN mobile money from A2 as well as receiving another GHs 1,000.00 on 14/05/2022 being the GHs 2,000.00 he charged for driving the alleged vehicle purchased by Mohammed to Paga turned out to be untrue.

The said MoMo transactions of GHs 1,000.00 on 11/05/2022 and the other GHs 1,000.00 on 14/05/2022 did not bear the name of A2 or his number as the sender of the money

contrary to A1 evidence in court and his evidence in exhibit D. In fact the GHs 1000.00 received on 11/05/2022 bears the name of Yakubu Tia as the sender. The second GHs 1,000.00 received on 14/05/2022 does not bear the name of A2 and could not have been a mobile money alert from A2 as stated in exhibit B. I quote the relevant portions of exhibit D.

“On same day I returned back (sic) to Tamale and kept the black Huawei Y8P smart phone in my... Two days later Alhassan sent GHs 2,000.00 into my mobile money number 0244690988 in order to encourage me to be sending stolen vehicle to Paga border for them.”

If indeed A2 sent GHs 2,000.00 to A1 two days after delivery of the vehicle on 10/05/2022 then the mobile money transaction would have been dated 12th May, 2022 and not 11th and 14th May, 2022 on the mobile money transaction records of A1. (Exhibit P). The alleged payment of GHs 2,000.00 from A2 is not borne by the mobile money transaction records of A1. In fact there is no record in exhibit P showing that on 12/05/2022 A1 received GHs 2,000.00 from A2 or any other source. That story was cooked by A1 to portray him as a mere agent of A2 and Mohammed after his arrest on the robbery. The transactions in the mobile money accounts of A1 contradicts the evidence of A1 in his investigation cautioned statement as well as his sworn evidence in chief on the payment of GHs 2,000.00 as payment for driving the vehicle to Paga and I hereby reject same.

The law as espoused in the case of **ODUPONG v REPUBLIC [1992-93] GBA 1038 CA** is 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 will be of no probative value unless he gave a reasonable explanation for the contradiction.”

The explanation given by A1 that he was only interested in the payment of the debt allegedly owed him by A2 and Mohammed and not how it came unto his mobile money

account is untenable. It is a clear case of afterthought when A1 realised that A2 had no such MTN mobile money transaction on his mobile account tendered In Court.

In the course of the trial, A1 caused his counsel to object to the tendering of the further investigation cautioned statement he gave to the police. The objection caused this Court to hold a voir dire on the admissibility of that statement. After the mini trial the Court admitted the statement and it was marked as exhibit E. The 1st accused person spent significant time in trying to discredit the investigation cautioned statements obtained from him in his evidence in chief. At a point in time A1 claimed the investigator decided to write whatever pleased him. A1 further stated that he was forced to make the statements and he had no other course than to thumb print same for the fear of assault by the police. I would have given the purported threat of assault, force or a claim that PW3 decided to write whatever pleased him a further thought and consideration if the charged cautioned statement of A1 obtained on 19th October, 2022 had been denied or objected to by A1. I say so because, A1 in his charged cautioned statement relied on all the investigation cautioned statements he claimed he was forced to thumbprint or were not his deed including the further investigation cautioned statement. I hereby reproduce the content of exhibit K (the charged statement).

"I am a driver and resident at Datoyili suburb of Tamale. I rely on my former statement given to the police on 15/07/2022 and 03/08/2022."

The charged cautioned statement was voluntarily obtained from A1 in Dagbani language and same recorded down in English language before the content was read to him to his understanding before thumb printing same in the presence of independent witness one Abdulai Abdul Wasid of Sukusuku. The accused person counsel did not object to the tendering of exhibit K. Again, A1 throughout his evidence in chief did not talk about exhibit K as having been obtained by force, coercion or did not understand the contents thereof or was not his deed. This document (exhibit K) was admitted in evidence without

objection. This actually confirm the prosecution case that exhibits D and E were voluntarily made by A1 and all his attempts to discredit them were clear case of afterthought.

Counsel for the prosecution rightly submitted that the case of **ASARE AND ANOR v THE REPUBLIC (NO. 3) [1968] GLR 804** is apt in this case when A1 subsequent statement (charged cautioned statement) unconditionally admitted the previous statements (investigation cautioned statements) he denied portions thereof. It actually confirms that, A1 voluntarily gave the investigation cautioned statements and the charged cautioned statements. This has relieved the burden on the prosecution in leading further evidence to demonstrate that the two investigation cautioned statements were voluntarily made.

“Where reference in one statement to another statement showed implicitly or explicitly that the accused relied upon or adopted the earlier statement that fact must be deemed to be an admission by the accused that the statement referred to was voluntary. In such case proof that the former was voluntary was dispensed with and thus considered as incorporated by reference. Casual or ambiguous reference would not relieve the prosecution of the burden and the incorporated statement would be inadmissible without proof. “

Before I consider the defence of A1 whether it raises reasonable doubt, I have decided not to place any premium on the search conducted by the police and exhibits that were tendered in relation to the search because they are of no evidential value or relevance in relation to this robbery case. Indeed, counsel for the Republic rightly submitted that the exhibits retrieved from the house of A1 after his arrest are unconnected and irrelevant to this instant case and I so hold.

Again, in the course of police investigations, an amount of One Hundred and Eighteen Thousand Ghana Cedis (GHs 118,000.00) was realized from the mobile phone of A1. The

prosecution however tendered in evidence cash the sum of One Hundred and Twenty Thousand (GHs 120,000.00) being money retrieved from the 1st accused person. Upon surfing the mobile phones of A1 in open Court as well as going through exhibits tendered by A1 on his bet winnings, there is no evidence before me connecting the said money to this crime. Again, there is no evidence before me that the money is from proceeds of crime. I hereby make a finding of fact that the money is proceeds from betting placed by A1. I am impressed by the honest admission made by Counsel for the Republic Isaac Ankah in his submission on this point. The money was paid into an interest yielding accounts of this Court and I hereby order the Registrar of this Court to pay the money together with whatever interest it has accrued to the 1st Accused person Adamu Issah.

Analysis of the Defence of A1

The 1st accused person who testified in Twi language virtually distanced himself from the admissions he made in his investigation cautioned statements that connects him to the crime. In so doing, A1 ended up by contradicting himself on the defence he put up as demonstrated supra. The explanation A1 gave by driving the robbed vehicle does not raise any reasonable doubt for this Court so to hold. The explanation rather supports the case of the prosecution that A1 and A2 robbed PW1 of the vehicle in his possession and caused same to be transported to Burkina Faso.

There is also no iota of truth in the defence put up by A1 that he was not at the scene of crime on 9/05/2022. The call records gave A1 up and in fact it clearly shows that on the night of the robbery, A1 was in Tamale. The evidence of DW1 rather support the prosecution case that A1 was in Tamale close to the scene of crime.

Again, A1 defence that the mobile phone of PW1 was a gift from A2 and as such he knew nothing of the robbery is discredited by way of cross examination by the prosecution as

well as A1 investigation cautioned statements. I have in parts of this judgment made pronouncements to that effect and I do not intend to go further on it.

In totality, I am of the firm view that the defence of A1 does not raise any reasonable doubt against the case of the prosecution which has been established beyond reasonable doubt.

From the analysis supra, I hold that the prosecution has established beyond reasonable doubt that:

1. That A1 and A2 were those who attacked PW1 on 9th May, 2022 wielding gun.
2. That by use of threat of harm and force amidst firing gun shot in the air and pushing PW1 out of the Toyota Hilux Pick-Up that was in his possession, A1 and A2 succeeded in seizing the vehicle from PW1 depriving him permanently of the vehicle.
3. That the Toyota Hilux Pick-Up that A1 and A2 seized from PW1 is not the property of A1 and A2.
4. That in the course of the robbery, A1 and A2 succeeded in robbing PW1 of his Huawei Y8P smart (exhibit B) phone as well.
5. That the Huawei smart phone was later found in the custody of A1 after the robbery when he sent same for unlocking.
6. That A1 and A2 after dishonestly appropriating the Toyota Hilux Pick-Up vehicle from PW1 succeeded in driving the vehicle from Tamale to Paga Border in aid of getting the vehicle out of Ghana to Burkina Faso thereby depriving the owner of it permanently.
7. That the vehicle seized by A1 and A2 in the presence of PW1 has not been recovered up to date.
8. That A1 and A2 conspired to rob PW1 of his vehicle and the properties in it on 9th May, 2022.

9. The accused persons herein robbed PW1 of the vehicle in his possession on 9/05/2022.

I hereby convict the accused persons on count one (1) on the offence of conspiracy to commit crime to wit; stealing contrary to Sections 23 (1) and 149 of Act 29 as amended.

I further convict A1 on count two of the offence of robbery contrary to Section 149 of Act 29 as amended.

Before I sentence A1 I am mandated by law to hear a plea of mitigation from him.

Plea of Mitigation

By Counsel for A1: We conceded that A1 now convict is known to this Court on the offence of stealing a Pick-Up that sent him to jail for two (2) years. Again we concede that robbery of vehicles is rampant in Tamale so ordinarily the Court is enjoined to take these into consideration in imposing sentence on the convict.

That notwithstanding, we pray the Court to temper justice with mercy and have mercy on the convict who is already serving a forty (40) years sentence by this Court in another robbery case. I pray that the Court gives a sentence that is lower than the forty years sentence already imposed on the convict.

These offences the accused person committed preceded the offence he was convicted on and sentenced to forty years in prison.

I pray that the Court have a look at section 301 of Act 30 which gives the Court the discretion to make a later sentence run concurrently with a previous sentence and not arising out of the same facts.

By Prosecution: I leave the sentence to the discretion of the court.

Sentence

This court convicted A1 of robbery involving A1 and A2 which took place on 24th May, 2022 with the same modus operandi by the same accused persons herein and I sentenced A1 to forty (40) years on conspiracy to commit crime to wit robbery and forty years imprisonment on the offence of robbery. I ordered that both counts run concurrently. The case is titled;

THE REPUBLIC v ADAMU ISSAH AND ALHASSAN (AT LARGE)

CASE NO; NR/TL/HC/CC1/9/2023

In that judgment I made reference to a case involving A1 hearing and a Togolese National and this same Court convicted A1 of stealing a Nissan Pick-Up of MTN and succeeded in driving it out of Ghana to the Republic of Togo. Lack eluded A1 and he was arrested in a village in Togo and he was brought to Ghana to face trial. After full trial this very Court differently constituted sentenced A1 to two (2) years imprisonment on the offence of conspiracy to commit crime to wit; stealing and stealing to run concurrently.

It was after A1 had served his sentenced and released from prison that he has now graduated from the offence of stealing to the offence of robbery. It is true that the commission of this current offence preceded the commission of the offence of robbery that this Court sentenced A1 to forty years imprisonment.

I have read Section 301 of Act 30 on the effect of consecutive sentence in situations where a convict is already serving a term in prison and before the expiration of his sentence another term of imprisonment is imposed on him in a different case, the convict will have to finish serving the previous conviction before he begin the sentence in the subsequent term unless the court otherwise direct.

Section 301 of Act 30 states as follows:

“Where a person after conviction of a criminal offence is convicted of a different criminal offence, before sentence is passed on that person under the first conviction or before the expiration of that sentence, a sentence which is passed on that person under the subsequent conviction, shall be executed after the expiration of the first sentence, unless the Court directs that it shall be executed concurrently with the first sentence or a part of it.”

This provision gives the trial Judge a discretion to impose a sentence to run concurrently with a previous sentence imposed on the accused person in a different case of which the convict has not finished serving the sentence. The refusal of the trial judge to make a pronouncement on the sentence imposed after the trial to run concurrently where the convict is already serving a term of imprisonment will make the two sentences to run consecutively. This provision of the law has given a discretion to trial judges to use it to mitigate the effect of a convict serving a long sentence in two different crimes committed by the convict.

After taking all factors of mitigation and the theories of punishment into consideration, I hereby sentence A1 on count one (conspiracy to commit crime to wit robbery) to forty (40) years imprisonment and on count two (robbery), I sentence A1 to forty (40) years imprisonment. The sentences are to run concurrently.

In reference to section 301 of Act 30, I further direct that the sentence in this case are also to run concurrently with the sentence I imposed on A1 in Case Number: **NR/TL/HC/CC1/9/23 titled; THE REPUBLIC v ADAMU ISSAH and ALHASSAN (At large)** and which said judgment is dated 18th April, 2023.

In effect the sentences imposed on A1 in this case will run concurrently with the sentences I imposed on A1 in the other case mention supra of which A1 has stated serving the sentence.

Upon the arrest of A2 he should be produced before this Court for further orders since he is at large.

SGN

HIS LORDSHIP JUSTICE ERIC ANSAH ANKOMAH

JUSTICE OF THE HIGH COURT

TAMALE

