IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE, CRIMINAL COURT 4, HELD IN ACCRA ON TUESDAY, THE 4TH DAY OF MARCH, 2025, BEFORE HER LADYSHIP, COMFORT KWASIWOR TASIAME, JUSTICE OF THE HIGH COURT.

SUIT NO.: CRT/03/2023

THE REPUBLIC

VRS.

1. **HAVILAH OIL LTD**
2. **LILIAN ACHEAMPONG**
3. **NICHOLAS FREDUAH KWARTENG**
4. **KWAME OTCHERE DARKO**

ACCUSED PERSONS –ABSENT

COUNSEL: DAVID SOWAH KPOBI (ARO) FOR THE REPUBLIC - PRESENT
PAA KWESI KUDOADZI FOR A3 -PRESENT
REBECCA DARKO FOR A1 AND A4 – ABSENT

RULING

Accused persons have been charged with a count of failure to pay tax contrary to section 80 of the Revenue Administration Act, 2016 (Act, 915). Section 80 of Act 915, provides that "A person who fails to pay tax by the date on which the tax is payable commits an offence and is liable on summary conviction (a) where the failure relates

to an amount exceeding two thousand currency points, to a fine of not less than two hundred penalty units and not more than one thousand penalty units or to a term of imprisonment of not less than three months and not more than one year or to both; and (b) in any other case to a fine of not less than fifty penalty units and not more than two hundred penalty units or to a term of imprisonment of not less than one month and not more than three months or to both.

The brief facts have it that, demand notices were served on the accused persons to notify them of their indebtedness to the Republic of Ghana. The accused persons had also applied for schedules to pay their debts. All accused signed agreement to pay the debts involved except A3. Based on his assertion that he owes not leading to refusal to sign to pay that the prosecution is pursuing the charges against him.

Principally, in every criminal trial, prosecution has the onus to prove the essential elements of the crime against the accused person.

The elements of the offence per section 80 of Act 915 which provides that "A person who fails to pay tax by the date on which the tax is payable commits an offence and is liable on summary conviction" are:

1. That there must be a taxpayer**.**
2. That person must have been liable or assessed to payment of tax.
3. That tax liability must have been due or the tax has become a debt.

At the close of the prosecution's case accused person made submissions of no case through his counsel. Learned counsel for the Accused submitted that prosecution ought to prove its case beyond reasonable doubt. He supported this principle with the case of FRIMPONG ALIAS IBOMAN V THE REPUBLIC [2012]1 SCGLR 297 Where it was held that ...The burden of proof remains on the prosecution throughout the case and it is only after a prima facie case has been established that the Appellant therein accused is called upon to give his side of the story.

So, at the close of prosecution's case, the court must find out whether there was a prima facie case against the accused person. A prima facie case is a strong evidence sufficient to link the accused person to the commission of the offence charged that warrants the calling on the accused to give his version of the story. See **Amartey v. The State** [1964] GLR 256, **Gligah & Another v The Republic** [2010] SCGLR 870, **Dexter Johnson v The Republic** [2011] SCGLR 601 and **Kwaku Frimpong alias Iboman v The Republic** [2012] 45 GMJ 1 S.C.

STATEMENT OF THE LAW

A submission of no case to answer is provided for under section 173 of the Criminal and Other Offences (Procedure) Act, 1960, (Act 30). The Supreme Court in the case of the **State vrs Ali Kassena (1962) 1 GLR 144**, laid down the circumstances under which a submission of no case should be upheld by a court as follows:

> ***A submission that there is no case to answer may properly be made and upheld (a) when there has been no evidence to prove an essential element in the alleged offence; (b) when the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict upon it.***

Again, in the in the case of **Apaloo v The Republic (1975) 1GLR 156,** the Court of Appeal, relying on the Supreme Court case of **The State v Ali Kassena (1962) GLR 144** stated as follows:

"*There has recently sprung up the practice by some counsel to make a submission of no case to answer in the teeth of direct cogent evidence implicating the accused in the crime charged. This invariably delays the dispatch of work in the criminal courts, and this court now considers it necessary to re-state the tests for making a submission of no case. The circumstances in which a submission of no case may successfully be made are:* ***(a) when there has been no evidence to prove an essential element in the crime charged; and (b) when the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so***

manifestly unreliable that no reasonable tribunal could safely convict upon it:"

In the more recent case of **Logan v The Republic (2007-2008) SCGLR 76** the Supreme Court held that at the end of the prosecution's case there must be direct or circumstantial evidence implicating an accused person. Apart from these two situations, a court should not in general be called upon to reach a decision as to conviction or acquittal until the whole of the evidence which either side wishes to tender has been placed before it.

It is therefore clear from the authorities that a submission of no case is not raised just as a matter of course. In all cases, there ought to be a legal basis for raising a submission of no case after the close of the Prosecution's case. Evidence is said to be sufficient when it is of such probative force as to convince and which if un-contradicted will justify a conviction (**State vrs Ali Kassena, supra)**. Thus, at the end of the case of the prosecution, a prima facie case ought to have been made out against the accused persons warranting the opening of their defence.

In assessing the appropriate standard of evidence for the prosecution to satisfy in order to survive a submission of no case, the Supreme Court in **Tsatsu Tsikata vrs the Republic [2003-2004] SCGLR** … stated that:

> "*We therefore hold that where reasonable minds could differ as to the import of the evidence presented in a motion for submission of no case, that motion should not be upheld. If, on the other hand, there can be but one and only one reasonable conclusion favouring the moving party, even assuming the truth of all that the prosecution has to say, the judge must grant the motion. Where the submission is rejected and the case goes to trial, it is then that the judge or jury as appropriate, being the trier of facts, are called upon to determine whether or not the guilt of the accused has been proved beyond reasonable doubt.*

The Applicant sought to demonstrate that, from the evidence adduced by the prosecution, there is no basis for the prosecution of A3, and because of that, the prosecution is targeted, premature and wholly unnecessary. Learned counsel submitted further that Prosecution witness; Nathaniel Tetteh, Chief Revenue Officer of the Debt Management and Enforcement Unit of the GRA testified that for the period under review, A1, accused company had incurred a debt of some Nine Million, Five Hundred and Five Thousand, Two Hundred and Sixty cedis, Sixty-Three pesewas in unpaid taxes and levies and per series of letters between A1 and the GRA, the company had admitted its liability as expressed on the various demand notices. Further that, by virtue of section 58 of the Revenue Administration Act, the directors were equally as liable as the company for debts incurred by the company in unpaid taxes and as a result all the directors of the company within the relevant period were equally liable for the debt of the company. That A3 at the relevant period under consideration was Managing Director and a majority shareholder.

"Section 58(1) of Revenue Administration Act, 2016(Act 915) provides "Where an entity fails to pay tax on time, a person who is or has been **a manager** of the entity during the relevant time is jointly and severally liable with the entity for payment of the tax. According to the learned prosecutor sub-section one applies irrespective of whether the entity ceases to exist. Section 58(7) of Act, 915 provides "in this section 'manager' of an entity includes a person purporting to act as a manager of that entity; and

Learned Counsel for the applicant submitted further that, each of the directors of the company are to be treated equally as the taxpayer and provided the same rights under law as a defaulting taxpayer.

Prosecution tendered Exhibit A which is a search conducted at the Registry of Registrar of Companies. This document indicates that A3 is a Director of A1 Company during the period tax debt accrued.

Learned prosecutor submitted that, Section 51 (1) of the Revenue Administration Act, 2016 (act 915) provides that "Tax is a debt due to the Government on the date it becomes payable. Subsection 2 also states that, the Commissioner-General may initiate proceedings in court for the recovery of unpaid tax as well as the cost of the suit. And that Section 46(1) of Act 915 provides that Tax is payable at the time specified in the tax law under which tax is charged. According to prosecution the said products which is petroleum for which tax has accrued were lifted between July, 2018 to August, 2020. That the standard practice is that GRA grants taxpayers 21 days to pay their tax once Petroleum products are lifted and an extra 4 days' grace period given bringing the total grace period to 25 days. These criminal proceedings were brought against accused persons in November 2022 and their tax debt stood at GH¢9,505,260.63

I have considered the application and the response; it is apparently clear that A3 was a director of A1 company at the time of the tax debt and the tax debt is owing. And being a director, he has a role to play in the payment of tax debts. I hold that the application is not in line with the rules guiding a submission of no case. This is because issues such as A3 has not been served personally, time must be given to A3 to settle the tax debt and there are talks for the settlement of the tax debt etc. are not the principles guiding filing of submission of no case to answer. The application does not meet the criteria as enumerated in plethora of cases such as **State vrs Ali Kassena, supra, Tsatsu Tsikata vrs the Republic(supra)**. A3 was served with the criminal summons and he is before the court because he is a director of A1 company. I hold further that this application is misconceived and it is hereby dismissed. I further hold that a prima facie case has been made against A3. He is to open his defence.

This suit is adjourned to April 7, 2025 for defence at 9:00am.

(SGD)

COMFORT KWASIWOR TASIAME

(JUSTICE OF THE HIGH COURT)