IN THE HIGH COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE FINANCIAL & ECONOMIC DIVISION 2 HELD IN ACCRA ON TUESDAY THE 16TH DAY OF APRIL, 2024 BEFORE HER LADYSHIP JUSTICE AFIA SERWAH ASARE-BOTWE (MRS.) JUSTICE OF APPEAL SITTING AS AN ADDITIONAL HIGH COURT JUDGE

SUIT NO. CR 241/2019

THE REPUBLIC

VRS.

1. SEDINA CHRISTINE TAMAKLOE ATTIONU (AT LARGE)

2. DANIEL AXIM

PARTIES: **A2 PRESENT**

A1 ABSENT

COUNSEL: **MRS. STELLA OHENE-APPIAH (PSA) AND MS. WINIFRED SARPONG (PSA) LED BY HON. DEPUTY ATTORNEY-GENERAL ALFRED TUAH YEBOAH FOR THE REPUBLIC PRESENT**

MR. AUGUSTINES OBOUR FOR A2 PRESENT WITH DR. MAURICE ADJEI AND MR. ALEXANDER NARTEY

CERTIFIED TRUE COPY
REGISTRAR
HIGH COURT
FINFRAU JURISDICTION, Lcc/ACCRA

JUDGMENT

This case commenced on the 30th of January, 2019, when the Republic instituted the instant criminal proceedings by the filing of a charge sheet containing 78 counts (but misnumbered as 80 counts) as against the accused persons in various respects.

The charges and their particulars are relevant for our purposes and reproduced verbatim hereunder;

COUNT ONE

STATEMENT OF OFFENCE

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29)

PARTICULARS OF OFFENCE

Sedina Christine Tamakloe Attionu, on or about 28th August 2014 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢500,000.00 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT TWO

STATEMENT OF OFFENCE

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29)

PARTICULARS OF OFFENCE

Sedina Christine Tamakloe Attionu on or about 13th April, 2016 in the Greater Accra Region dishonestly appropriated the sum GH¢84,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT THREE

STATEMENT OF OFFENCE

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29)

PARTICULARS OF OFFENCE

Sedina Christine Tamakloe Attionu, on or about 21st April, 2016 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢73,500 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT FOUR

STATEMENT OF OFFENCE

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29)

PARTICULARS OF OFFENCE

Sedina Christine Tamakloe Attionu, on or about 1st June, 2016 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢126,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT FIVE

STATEMENT OF OFFENCE

Conspiracy to commit crime namely stealing contrary to Sections 23(1) and 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1. Sedina Christine Tamakloe Attionu, 2) Daniel Axim on or about 16th June, 2016 in Accra in the Greater Accra Region agreed to act together

with a common purpose to steal the sum of GH¢114,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT SIX

STATEMENT OF OFFENCE

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29)

PARTICULARS OF OFFENCE

1. Sedina Christine Tamakloe Attionu, 2) Daniel Axim on or about 16th June, 2016 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢114,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT SEVEN

STATEMENT OF OFFENCE

Conspiracy to commit crime namely stealing contrary to Sections 23(1) and 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1. Sedina Christine Tamakloe Attionu, 2) Daniel Axim between 14th and 15th July, 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose to steal the sum of GH¢228,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT EIGHT

STATEMENT OF OFFENCE

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29)

PARTICULARS OF OFFENCE

1. Sedina Christine Tamakloe Attionu, 2) Daniel Axim between 14th and 15th July, 2016 in Accra in the Greater Accra Region Dishonestly appropriated the sum of GH¢228,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT NINE

STATEMENT OF OFFENCE

Conspiracy to commit crime namely stealing contrary to Sections 23(1) and 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1. Sedina Christine Tamakloe Attionu, 2) Daniel Axim on or about 20th July, 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose to steal the sum of GH¢204,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT TEN

STATEMENT OF OFFENCE

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1. Sedina Christine Tamakloe Attionu, 2) Daniel Axim on or about 20th July, 2016 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢204,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT ELEVEN

STATEMENT OF OFFENCE

Conspiracy to commit crime namely stealing contrary to Sections 23(1) and 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1. Sedina Christine Tamakloe Attionu, 2) Daniel Axim on or about 29th July, 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose to steal the sum of GH¢192,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT TWELVE

STATEMENT OF OFFENCE

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1. Sedina Christine Tamakloe Attionu, 2) Daniel Axim on or about 29th July, 2016 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢192,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT THIRTEEN

STATEMENT OF OFFENCE

Conspiracy to commit crime namely stealing contrary to Sections 23(1) and 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1. Sedina Christine Tamakloe Attionu, 2) Daniel Axim on or about 25th August, 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose to dishonestly appropriate the sum of

GH¢158,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT FOURTEEN

STATEMENT OF OFFENCE

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1. Sedina Christine Tamakloe Attionu, 2) Daniel Axim on or about 25th August, 2016 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢158,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT FIFTEEN

STATEMENT OF OFFENCE

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

Sedina Christine Tamakloe Attionu on or about 31st August, 2016 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢50,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT SIXTEEN

STATEMENT OF OFFENCE

Conspiracy to commit crime namely stealing contrary to Sections 23(1) and 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1. Sedina Christine Tamakloe Attionu, 2) Daniel Axim on or about 28th September, 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose to dishonestly appropriate the sum of GH¢162,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT SEVENTEEN

STATEMENT OF OFFENCE

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1. Sedina Christine Tamakloe Attionu, 2) Daniel Axim on or about 28th September, 2016 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢162,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT EIGHTEEN

STATEMENT OF OFFENCE

Conspiracy to commit crime namely stealing contrary to Sections 23(1) and 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1. Sedina Christine Tamakloe Attionu, 2) Daniel Axim on or about 9th November, 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose to dishonestly appropriate the sum of GH¢138,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT NINETEEN

STATEMENT OF OFFENCE

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1. Sedina Christine Tamakloe Attionu, 2) Daniel Axim on or about 9th November, 2016 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢138,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT TWENTY

STATEMENT OF OFFENCE

Conspiracy to commit crime namely stealing contrary to Sections 23(1) and 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1. Sedina Christine Tamakloe Attionu, 2) Daniel Axim on or about 1st December, 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose to dishonestly appropriate the sum of GH¢50,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT TWENTY-ONE

STATEMENT OF OFFENCE

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1. Sedina Christine Tamakloe Attionu, 2) Daniel Axim on or about 1st December, 2016 in Accra in the Greater Accra Region dishonestly

appropriated the sum of GH¢50,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT TWENTY-TWO

STATEMENT OF OFFENCE

Conspiracy to commit crime namely stealing contrary to Sections 23(1) and 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1. Sedina Christine Tamakloe Attionu, 2) Daniel Axim on or about 5th December, 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose to dishonestly appropriate the sum of GH¢178,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT TWENTY-THREE

STATEMENT OF OFFENCE

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1. Sedina Christine Tamakloe Attionu, 2) Daniel Axim on or about 5th December, 2016 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢178,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT TWENTY-FOUR

STATEMENT OF OFFENCE

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

Sedina Christine Tamakloe Attionu on or about 31st March, 2015 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢20,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT TWENTY-FIVE

STATEMENT OF OFFENCE

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

Sedina Christine Tamakloe Attionu on or about 1st April, 2015 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢2,730 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT TWENTY-SIX

STATEMENT OF OFFENCE

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

Sedina Christine Tamakloe Attionu on or about 19th August, 2015 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢40,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT TWENTY-SEVEN

STATEMENT OF OFFENCE

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

Sedina Christine Tamakloe Attionu on or about 14th July, 2015 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢40,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT TWENTY-EIGHT

STATEMENT OF OFFENCE

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

Sedina Christine Tamakloe Attionu on or about 14th July, 2015 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢40,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT TWENTY-NINE

STATEMENT OF OFFENCE

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

Sedina Christine Tamakloe Attionu on or about 15th July, 2015 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢20,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT THIRTY

STATEMENT OF OFFENCE

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

Sedina Christine Tamakloe Attionu on or about 12th August, 2015 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢20,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT THIRTY-ONE

STATEMENT OF OFFENCE

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

Sedina Christine Tamakloe Attionu on or about 24th February, 2016 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢21,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT THIRTY-TWO

STATEMENT OF OFFENCE

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

Sedina Christine Tamakloe Attionu on or about 2nd March, 2016 in Accra in the Greater Accra Region dishonestly appropriated the sum of

GH¢43,550 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT THIRTY-THREE

STATEMENT OF OFFENCE

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

Sedina Christine Tamakloe Attionu on or about 11th August, 2015 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢40,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT THIRTY-FOUR

STATEMENT OF OFFENCE

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

Sedina Christine Tamakloe Attionu on or about 13th June, 2015 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢305,300 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT THIRTY-FIVE

STATEMENT OF OFFENCE

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

Sedina Christine Tamakloe Attionu on or about 21st June, 2015 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢274,500 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT THIRTY-SIX

STATEMENT OF OFFENCE

Willfully Causing Financial Loss to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

Sedina Christine Tamakloe Attionu on or about 1st April, 2015 in Accra in the Greater Accra Region willfully caused financial loss of GH¢2,730 to the State.

COUNT THIRTY-SEVEN

STATEMENT OF OFFENCE

Willfully Causing Financial Loss to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

Sedina Christine Tamakloe Attionu on or about 19th May, 2015 in Accra in the Greater Accra Region willfully caused financial loss of GH¢40,000 to the State.

COUNT THIRTY-EIGHT

STATEMENT OF OFFENCE

Willfully Causing Financial Loss to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

Sedina Christine Tamakloe Attionu on or about 14th July, 2015 in Accra in the Greater Accra Region willfully caused financial loss of GH¢40,000 to the State.

COUNT THIRTY-NIINE

STATEMENT OF OFFENCE

Willfully Causing Financial Loss to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

Sedina Christine Tamakloe Attionu on or about 15th July, 2015 in Accra in the Greater Accra Region willfully caused financial loss of GH¢20,000 to the State.

COUNT FORTY

STATEMENT OF OFFENCE

Willfully Causing Financial Loss to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

Sedina Christine Tamakloe Attionu on or about 12th August, 2015 in Accra in the Greater Accra Region willfully caused financial loss of GH¢20,000 to the State.

COUNT FORTY-ONE

STATEMENT OF OFFENCE

Willfully Causing Financial Loss to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

Sedina Christine Tamakloe Attionu on or about 12th August, 2015 in Accra in the Greater Accra Region willfully caused financial loss of GH¢20,000 to the State.

COUNT FORTY-TWO

STATEMENT OF OFFENCE

Willfully Causing Financial Loss to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

Sedina Christine Tamakloe Attionu on or about 2nd March, 2016 in Accra in the Greater Accra Region willfully caused financial loss of GH¢43,550 to the State.

COUNT FORTY-THREE

STATEMENT OF OFFENCE

Willfully Causing Financial Loss to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 13th April, 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose to willfully cause financial loss to the State.

COUNT FORTY-FOUR

STATEMENT OF OFFENCE

Willfully Causing Financial Loss to the State contrary to Section 179A (3) (a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 13th April, 2016 in Accra in the Greater Accra Region willfully caused financial loss of GH¢84,000 to the State.

COUNT FORTY-FIVE

STATEMENT OF OFFENCE

Conspiracy to commit crime namely, willfully causing financial loss to the State contrary to Sections 23(1) and 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1) Sedina Christine Tamakloe Attionu 2)Daniel Axim on or about 21st April, 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose to willfully cause financial loss to the State.

COUNT FORTY-SIX

STATEMENT OF OFFENCE

Willfully Causing Financial Loss to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 21st April, 2016 in Accra in the Greater Accra Region willfully caused financial loss of GH¢73,500 to the State.

COUNT FORTY-SEVEN

STATEMENT OF OFFENCE

Willfully Causing Financial Loss to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

Sedina Christine Tamakloe Attionu on or about 21st April, 2016 in Accra in the Greater Accra Region wilfully accused financial loss of GH¢186,000 to the State.

COUNT FORTY-EIGHT

STATEMENT OF OFFENCE

Conspiracy to commit crime namely, willfully causing financial loss to the State contrary to Sections 23(1) and 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 16th June, 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose to willfully caused financial loss to the State.

COUNT FIFTY-ONE

STATEMENT OF OFFENCE

Willfully Causing Financial Loss to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 16th June, 2016 in Accra in the Greater Accra Region willfully caused financial loss of GH¢114,000 to the State.

COUNT FIFTY-TWO

STATEMENT OF OFFENCE

Conspiracy to commit crime namely, willfully causing financial loss to the State contrary to Sections 23(1) and 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim between 14th and 15th July 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose to wilfully caused financial loss to the State.

COUNT FIFTY-THREE

STATEMENT OF OFFENCE

Willfully Causing Financial Loss to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim between 14th and 15th July, 2016 in Accra in the Greater Accra Region wilfully caused financial loss of GH¢228,000 to the State.

COUNT FIFTY-FOUR

STATEMENT OF OFFENCE

Willfully Causing Financial Loss to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 20th July, 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose to wilfully cause financial loss to the State.

COUNT FIFTY-FIVE

STATEMENT OF OFFENCE

Willfully Causing Financial Loss to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 20th July, 2016 in Accra in the Greater Accra Region wilfully caused financial loss of GH¢204,000 to the State.

COUNT FIFTY-SIX

STATEMENT OF OFFENCE

Conspiracy to commit crime namely, Wilfully Causing Financial Loss to the State contrary to sections 23(1) and 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 29th July, 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose of wilfully causing financial loss to the state.

COUNT FIFTY-SEVEN

STATEMENT OF OFFENCE

Willfully Causing Financial Loss to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 29th July, 2016 in Accra in the Greater Accra Region wilfully caused financial loss of GH¢192, 000 to the State.

COUNT FIFTY-EIGHT

STATEMENT OF OFFENCE

Conspiracy to commit crime namely, Wilfully Causing Financial Loss to the State contrary to sections 23(1) and 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 25th August, 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose of wilfully causing financial loss to the State.

COUNT FIFTY-NINE

STATEMENT OF OFFENCE

Willfully Causing Financial Loss to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 25th August, 2016 in Accra in the Greater Accra Region wilfully caused financial loss of GH¢158,000 to the State.

COUNT SIXTY

STATEMENT OF OFFENCE

Conspiracy to commit crime namely, Wilfully Causing Financial Loss to the State contrary to sections 23(1) and 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 28th September, 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose of wilfully causing financial loss to the State.

COUNT SIXTY-ONE

STATEMENT OF OFFENCE

Willfully Causing Financial Loss to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 28th September, 2016 in Accra in the Greater Accra Region wilfully caused financial loss of GH¢162,000 to the State.

COUNT SIXTY-TWO

STATEMENT OF OFFENCE

Conspiracy to commit crime namely, Wilfully Causing Financial Loss to the State contrary to sections 23(1) and 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 9th November, 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose of wilfully causing financial loss to the State.

COUNT SIXTY-THREE

STATEMENT OF OFFENCE

Willfully Causing Financial Loss to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 9th November, 2016 in Accra in the Greater Accra Region wilfully caused financial loss of GH¢138,000 to the State.

COUNT SIXTY-FOUR

STATEMENT OF OFFENCE

Willfully Causing Financial Loss to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1) Sedina Christine Tamakloe Attionu on or about 11th November, 2016 in Accra in the Greater Accra Region wilfully caused financial loss of GH¢69,012 to the State.

COUNT SIXTY-FIVE

STATEMENT OF OFFENCE

Conspiracy to commit crime namely, Wilfully Causing Financial Loss to the State contrary to sections 23(1) and 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 1st December, 2016 in Accra in the Greater Accra Region agreed to act

together with a common purpose of wilfully causing financial loss to the State.

COUNT SIXTY-SIX

STATEMENT OF OFFENCE

Willfully Causing Financial Loss to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1) Sedina Christine Tamakloe Attionu on or about 1st December, 2016 in Accra in the Greater Accra Region wilfully caused financial loss of GH¢50,000 to the State.

COUNT SIXTY-SEVEN

STATEMENT OF OFFENCE

Conspiracy to commit crime namely, Wilfully Causing Financial Loss to the State contrary to sections 23(1) and 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 5th December, 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose of wilfully causing financial loss to the State.

COUNT SIXTY-EIGHT

STATEMENT OF OFFENCE

Willfully Causing Financial Loss to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

1) Sedina Christine Tamakloe Attionu on or about 5th December, 2016 in Accra in the Greater Accra Region wilfully caused financial loss of GH¢178,000 to the State.

COUNT SIXTY-NINE

STATEMENT OF OFFENCE

Causing Loss to Public Property, contrary to section 2 of the Public Property Protection Act, 1977 (SMCD 140).

PARTICULARS OF OFFENCE

Sedina Christine Tamakloe Attionu between December, 2016 and August, 2018 in Accra in the Greater Accra Region with gross negligence, caused loss of GH¢4,072,210.50 to the State.

COUNT SEVENTY

STATEMENT OF OFFENCE

Causing Loss to Public Property, contrary to section 2 of the Public Property Protection Act, 1977 (SMCD 140).

PARTICULARS OF OFFENCE

Sedina Christine Tamakloe Attionu between December, 2016 and August, 2018 in Accra in the Greater Accra Region with gross negligence, caused loss of GH¢2,917,663 to the State.

COUNT SEVENTY-ONE

STATEMENT OF OFFENCE

Causing Loss to Public Property, contrary to section 2 of the Public Property Protection Act, 1977 (SMCD 140).

PARTICULARS OF OFFENCE

Sedina Christine Tamakloe Attionu between December, 2016 and August, 2018 in Accra in the Greater Accra Region with gross negligence, caused loss of GH¢15,168,245 to State.

COUNT SEVENTY-TWO

STATEMENT OF OFFENCE

Improper payment of public funds contrary to section 96(1)(c) of the Public Financial Management Act, 2016 (Act 921).

PARTICULARS OF OFFENCE

Sedina Christine Tamakloe Attionu on or about 6th January 2017 in Accra in the Greater Accra Region improperly paid to yourself the sum of GH¢164,038.28 which was not verified in line with existing procedures.

COUNT SEVENTY-THREE

STATEMENT OF OFFENCE

Improper payment of public funds contrary to section 96(1)(c) of the Public Financial Management Act, 2016 (Act 921).

PARTICULARS OF OFFENCE

Sedina Christine Tamakloe Attionu on or about 6th January 2017 in Accra in the Greater Accra Region improperly paid to yourself the sum of GH¢109,705.38 to Mustapha Abubakar Batalima which was not verified in line with existing procedures.

COUNT SEVENTY-FOUR

STATEMENT OF OFFENCE

Unauthorized Commitment, resulting in a Financial Obligation for the Government contrary to section 96(1)(a) of the Public Financial Management Act, 2016 (Act 921).

PARTICULARS OF OFFENCE

Sedina Christine Tamakloe Attionu between December 2016 and August 2018 in Accra in the Greater Accra Region without authorization, committed the Government of Ghana to a financial obligation of GH¢61,735,832.50.

COUNT SEVENTY-FIVE

STATEMENT OF OFFENCE

Money Laundering contrary to section 1(1)(c) of the Anti-Money Laundering Act, 2008 (Act 749).

PARTICULARS OF OFFENCE

Sedina Christine Tamakloe Attionu on or about 28th August, 2014 in Accra in the Greater Accra Region took possession of the sum of GH¢500,000.00 the property of MASLOC knowing it to be proceeds of crime.

COUNT SEVENTY-SIX

STATEMENT OF OFFENCE

Money Laundering contrary to section 1(1)(c) of the Anti-Money Laundering Act, 2008 (Act 749).

PARTICULARS OF OFFENCE

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim between June and December 2016 in Accra in the Greater Accra Region took possession of the sum of GH¢2,003,800 the property of MASLOC knowing it to be proceeds of crime.

COUNT SEVENTY-SIX

STATEMENT OF OFFENCE

Money Laundering contrary to section 1(1)(c) of the Anti-Money Laundering Act, 2008 (Act 749).

PARTICULARS OF OFFENCE

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim between 13th and 21st June 2015 in Accra in the Greater Accra Region took possession of the sum of GH¢579,800 the property of MASLOC knowing it to be proceeds of crime.

COUNT SEVENTY-EIGHT [sic]

STATEMENT OF OFFENCE

Money Laundering contrary to section 1(1)(c) of the Anti-Money Laundering Act, 2008 (Act 749).

PARTICULARS OF OFFENCE

Sedina Christine Tamakloe Attionu between March 2015 and June 2016 in Accra in the Greater Accra Region took possession of the sum of GH¢620,780 the property of MASLOC knowing it to be proceeds of crime.

COUNT SEVENTY-NINE [sic]

STATEMENT OF OFFENCE

Contravention of the Public Procurement Act contrary to sections 92(1), and 40(1)(a) of the Public Procurement Act, 2003 (Act 663).

PARTICULARS OF OFFENCE

Sedina Christine Tamakloe Attionu in December 2016 in Accra in the Greater Accra Region procured the supply of 350 vehicles from Mac Autos & Spare Parts Ghana Ltd. using public funds without satisfying the prescribed conditions for single-source procurement.

COUNT EIGHTY [sic]

STATEMENT OF OFFENCE

Contravention of the Public Procurement Act contrary to sections 92(1), and 14(1)(a) of the Public Procurement Act, 2003 (Act 663).

PARTICULARS OF OFFENCE

Sedina Christine Tamakloe Attionu in December 2016 in Accra in the Greater Accra Region procured the supply of 350 vehicles from Mac Autos & Spare Parts Ghana Ltd. using public funds without recourse to laid-down procurement provisions.

The facts of the case, as attached to the Charge Sheet are stated below.

BRIEF FACTS

The facts of the case as attached to the charge sheet and read in open Court at the commencement of the trial are that the 1st accused person, Sedina Christine Tamakloe Attionu, was the Chief Executive Office of the Microfinance and Small Loans Centre (MASLOC) from November 2013 to January 2017. The 2nd accused person, Daniel Axim is the

former Operations Manager at MASLOC. MASLOC is a government agency set up to assist small and medium scale business with low interest loans.

In 2017, the Economic and Organized Crime office (EOCO) conducted investigations into certain fraudulent disbursement of MASLOC funds involving the 1st and 2nd accused persons.

Investigations revealed that in June 2014, MASLOC invested a sum of GH¢150,000 in Obaatanpa Micro Finance Company Limited (Obaatanpa), a licensed Tier II microfinance company located at Ejura in the Ashanti Region. Thereafter, the 1st accused person offered Obaatanpa a further investment sum of GH¢500,000. As a result, a MASLOC Agricultural Development Bank (ADB) cheque dated 24th July, 2014 in the sum of GH¢500,000 was drawn in favour of Obaatanpa.

Soon after Obaatanpa received the MASLOC cheque, the 1st accused person informed the Board Chairman of Obaatanpa that the investment amount GH¢500,000 would attract 24% interest. Obaatanpa decided to return the amount to MASLOC since the interest rate being demanded by the accused person was too high and unprofitable for its business and issued a cheque in refund of the loan amount.

Upon presentation of the cheque, the 1st accused person declined to accept the cheque and made a demand for a cash refund. A cash amount of GH¢500,000 was delivered to the 1st accused person by the Board Chairman of Obaatanpa on the night 28th August, 2014 at the Baatsona Total Filling Station located on the Spintex Road in Accra. By a letter dated 28th August, 2014, the accused person acknowledged receipt of the refund sum.

In 2015, per letters some of which were under the hand of the accused person, MASLOC made demands on Obaatanpa for the payment of interest on the principal investment sum of GH¢500,000. In response to the demands, Obaatanpa wrote a reminder to MASLOC concerning the payment of the loan amount and drew the 1st accused person's attention to the unjustified demands whereupon the demands stopped.

In 2017, upon the assumption of office of new Chief Executive of MASLOC a demand notice was again sent to Obaatanpa for the payment of accrued interest on the same investment sum of GH¢500,000 whereupon Obaatanpa once again informed MASLOC that the money had already been refunded since 2014. Investigations subsequently showed that MASLOC had no record of the amount having been paid to it and that the 1st accused person had appropriated the amount of GH¢500,000.

Investigations further revealed that in April 2016, the 1st accused person obtained approval of the MASLOC Board to utilize the sum of GH¢1,706,000 of MASLOC funds for a country wide sensitization and monitoring programme for 85,300 beneficiaries of MASLOC loans. Each of the targeted 85,300 beneficiaries was to receive Twenty Ghana Cedis (GH¢20) to cover transportation and refreshment.

Between April and December 2016, upon the authority of the 1st accused person a total sum of GH¢1,816,000 withdrawn in tranches, was received by the 1st and 2nd accused persons even though approval had been given by the MASLOC Board for a sum of GH¢1,706,000.

Again, investigations revealed that out of the sum of GH¢1,816,000 only GH¢1,300 was spent on refreshment for some beneficiaries in the Volta,

Greater Accra and Brong-Ahafo Regions only and that no programme whatsoever took place in the other seven regions.

Investigations also revealed that prior to the Board's approval, the first accused person also appropriated GH¢246,280 meant for training, sensitization and financial literacy.

Investigations further disclosed that in 2013, following a fire disaster at the Kantamanto Market, the then President John Mahama directed MASLOC to provide an assistance of GH¢1,465,035 to victims of the fire disaster. The money was however to be disbursed through Dwadifo Adamfo Savings and Loans Company Limited (Dwadifo Adamfo0. Investigations showed that the 1st accused person appropriated GH¢579,800 out of the sum of GH¢1,465,035.

In August, 2016, the 1st accused person on behalf of MASLOC wrote to the Public Procurement Authority (PPA) for approval to procure vehicles from Mac Autos and Spare Parts Ltd. (Mac Autos) for the GPRTU using the single source method under the Public Procurement Act. In October 2016, the PPA wrote back to MASLOC requesting MASLOC to furnish it with financial arrangement approved by the Ministry of Finance.

On 5th December, 2016, the then Minister of Finance wrote to the PPA to confirm financial arrangements which were being put in place for the purchase of vehicles. Without any approval from PPA, the 1st accused person signed a contract with Mac Autos on 6th December, 2016 to supply MASLOC with 350 vehicles comprising of 150 Chevy Aveo Saloon, 100 Chevy Sparklite and 100 33-Seater Isuzu Buses. MASLOC applied for a tax waiver on all the vehicles. The unit price offered by Mac Autos to MASLOC for the Chevy Aveo was GH¢74,495 ($18,883.39),

however investigations revealed that the actual retail price mac offered for the same model within the same year without duty was GH¢47,346.93 ($12,009.91). The unit price offered for the Chevy Sparklite was GH¢65,095.00 ($16,500.63) when the actual price offered by Mac Autos within that same period without duty was GH¢35,918.37 ($9,104.77). For the Isuzu 33-seater buses the unit price offered to MASLOC was GH¢445,560 ($112,942.96) but the actual retail price without duty was GH¢293,877.55 ($ 74,493.67).

Again, in November 2016, MASLOC procured 200 pieces of Samsung B310 mobile dual sim phones under a project called PINCO Project Market Survey. Investigations revealed that although the actual open market price of the phones was GH¢24,400, the 1st accused person purchased them at the inflated the price of GH¢93,412.

Investigations also revealed that, in January 2017, the 1st accused person, without the requisite approval and authorization, caused to be paid to herself and her deputy, one Mustapha Abubakar Batalima, the sums of GH¢135,592.33 and GH¢82,218.76 respectively as ex gratia. Furthermore, in the same month, the 1st accused person caused to be paid to herself and her deputy cash payments in the sums of GH¢28,445.94 and GH¢27,486.62 respectively, purportedly in lieu of leave in contravention of the law.

OTHER ANTECEDENTS OF THIS CASE:

After due disclosures and other procedural issues including the requirement for interpretation sought by A2 before the Supreme Court, the prosecution called the following witnesses;

- **PW 1-Stephen Amoah**, Chief Executive Officer of the Microfinance and Small Loans Centre (MASLOC),
- **PW2-Samuel Quansah,** Accountant and Board Member, Obaatanpa Microfinance.
- **PW3 -Seth Obugyei Asiedu**, a Traditional Ruler and Farmer.
- **PW4-Samuel Neequaye,** a driver at MASLOC
- **PW5-Francis Bandoh**, Head of Finance at MASLOC;
- **PW6-Philip Baffour-Awuah**; Chartereed Accountant and Managing Partner of Baffuor Awuah and Associates),and
- **PW7- Field Desk Officer (FDO) 1 Kodua Basoa Panyin Twum,**at the Economic and Organised Crime Office, the investigating officer in this case.

In the course of the trial, i.e. 28th July, 2021, A1 filed an application for the release of her passport so that she could see to what was claimed to be a degenerating medical condition known as Multiple Sclerosis in the United States of America during the long vacation. She stated at paragraph 14 of the affidavit in support that she would return "a few weeks after my treatment". The Prosecution did not oppose the application.

The Court granted the application and adjourned the matter to the new legal year. Unfortunately, A1 did not abide her undertaking to the Court and has since absconded, culminating in several Rulings, on the record in this case before this Court, which put together have the combined effect of declaring A1 a fugitive from justice and ordering that her trial be continued *in absentia.*

On the 15th of June, 2023, the prosecution announced the end of its case. On the 31st July, 2023, this Court delivered a Ruling to the effect that both accused persons had a case to answer.

The accused persons were ordered, per the Ruling of 31st July, 2023, to file their disclosures by 9th October, 2023. The case was then adjourned to **19th October, 2023** at 11:30 am for Case Management Conference (CMC). The CMC, as can be seen from the record, was delayed for so long because A2 failed to comply with the time lines laid down by the Court, thereby delaying the hearing itself.

In view of the continued absence of A1, the Registrar of this Court was directed to serve a copy of the Ruling and a hearing notice on her lawyer of record, Mr. Agbesi K. Dzapkasu.

It must be stated that on the record, no step has been taken by Mr. Agbesi Dzapkasu to be discharged as counsel for A1 in accordance with Regulation 87 of the Legal Profession (Professional Conduct and Etiquette) Rules, 2020 (L.I. 2423). The Court also notes that Mr. Dzakpasu continued appearing for A1 long after she stopped attending Court (or effectively absconded) and further that he has been duly notified, per the order of this Court, as well as A1, of the continuation of the trial.

In the Ruling of this Court dated 24th February, 2023, the Court considered issues relating inter alia to;

a) The propriety of the application filed on 5th October, 2021, seeking an order to try A1 in absentia; and

b) The propriety of service of the processes relating to the application on lawyers for A1.

Parts of the Ruling are reproduced hereunder for ease of reference;
"Article 19 (3) of the 1992 Constitution states that;

The trial of a person charged with a criminal offence shall take place in his presence unless; -

(a) he refuses to appear before the court for the trial to be conducted in his presence after he has been duly notified of the trial; or

(b) he conducts himself in such a manner as to render the continuation of the proceedings in his presence impracticable and the court orders him to be removed for the trial to proceed in his absence.

Emphasis mine.

Thus, the trial of an accused person in his (or her) absence is only done in exceptional circumstances where;

a) There is a refusal to appear before the court for the trial to be conducted in the presence of the Accused person after he or she has been duly notified of the trial; or (please note the disjunctive word);

b) he or she conducts himself in such a manner as to render the continuation of the proceedings in his (or her) presence impracticable and the court orders him to be removed for the trial to proceed in his absence.

Instances of the second situation would include incidents of an accused person who behaves in such a rowdy or uncontrollable manner as to make the trial impossible to proceed in his presence.

In the instant case, A1 is well aware that the case is pending against her as she had participated in the trial for over a year and half before she sought permission, not to go for treatment, but for a checkup. This Court in the Ruling dated 24th January, 2023 drew the conclusion that her continued absence was unjustified, and as such, there would be no need to rehash the facts. That Ruling concluded thus;

"I have taken a painstaking look at the documents attached to the affidavits filed on behalf of the Respondents, and the medical reports. There is nothing in those documents to the effect that the accused person is not fit to stand trial or cannot travel. There is nothing in those documents also showing that there is anything being done for A1 in the US which cannot be done in Ghana.

The situation in my view, is, bottom-line, that A1 has opted to stay in the US for, at best, medical tourism reasons, and that the court cannot countenance by staying proceedings until she deigns or sees it fit to return, particularly when the 2nd Accused person also has interest which ought to be protected by a fair and speedy trial. This 16-month delay caused by A1 is sufficient and should not continue. The reason for her absence is also not justified by law.

The Court therefore orders that the bonds executed by the 1st and 2nd sureties be forfeited to the Republic."

In the circumstances, and given the finding immediately above, as well as those contained in the Ruling of this Court dated 18th October, 2022 in respect of the Estreatment of bond against the sureties, Mr. Gavivina

Tamakloe and Mr. Alexander Kofi Mensah Mould, I held the view that Article 19(3)(a) would apply. That said however, I held the view that it would be fair and just to issue formal notice of the resumption of the trial to the 1st Accused person before the its resumption in her absence should she fail to appear at the next adjourned date. In the circumstances, the following order was made;

"It is hereby ordered, under Article 19(3) of the 1992 Constitution, the 1st Accused/Respondent, **Sedina Tamakloe Attionu** would be tried in absentia since she has disabled herself of the opportunity to take part in the pending trial although she is duly notified and aware of the pendency of the trial.

It is hereby further ordered that, before continuing with the trial, notice should be issued by way of this order of this Court, of the intention to do so by;

a. Serving a copy on Mr. Agbesi Dzakpasu, her lawyer of record.
b. By posting a copy at the 1st Accused's Person/Respondent, Sedina Tamakloe Attionu's last known place of abode.
c. By posting a copy on the Notice Board of this Court.
d. By a single publication in a newspaper of National Circulation.

The postings remain shall be for Twenty-One (21) days."

Before resuming the trial, it was ensured that the notices in the order of the Court were issued and carried out to the letter. The Court therefore rightfully proceeded to hear the case to its conclusion and is handing down this Judgment in those circumstances.

(For a similar treatment of an accused person who disabled himself from participating in a trial, please see the Judgment of this Court in **THE REPUBLIC v. IDDRISU ADAM (Suit No. FT/0072/2017 dated 18th December, 2020)**

The facts and the antecedents of the case and the evidential standard required will be dealt with in the light of this case.

BURDEN OF PROOF/BURDEN OFPERSUASION

Before assessing the evidence before the Court, I shall briefly reiterate the burden of proof required, in the light of the evidence adduced to prove the respective charges, first on the part of the prosecution, and then where the burden shifts, on the accused persons, in the circumstances of this case by way of the evidence mounted.

The required standard of proof is codified under the Evidence Act (NRCD 323) in at least three sections; Sections 11(2), 13(1) and 22 which are reproduced below;

"11(2) 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 the fact beyond reasonable doubt."

"13(1) (1) In any civil or criminal action the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond reasonable doubt."

"22. In a criminal action a presumption operates against the accused as to a fact which is essential to guilt only if the existence

of the basic facts that give rise to the presumption are found or otherwise established beyond reasonable doubt, and thereupon, in the case of a rebuttable presumption, the accused need only raise a reasonable doubt as to the existence of the presumed fact."

In the book **Essentials of the Ghana Law of Evidence**, S.A Brobbey deals extensively with the standard of proof required in criminal trials from pages 48 to 55. He states inter alia at pages 50 and 51;

"Proof beyond reasonable doubt does not mean that there should be no doubt whatsoever in the case presented by the prosecution. It means that by the end of the trial, the prosecution must prove every element of the offence or the charge (but not all the facts) and show that the defence is not reasonable.....

The consideration for the principle of proof beyond reasonable doubt can be illustrated this way: If there is any element of the charge which is essential for the accused to be convicted, that element should be established to the satisfaction of the trier of facts in such a manner that a reasonable mind could conclude that the accused is guilty of the offence or that the existence of the facts constituting the charge is more probable than its non-existence."

What does proof beyond reasonable doubt really entail?

In the case of **OSEI V. THE REPUBLIC [2009]24 MLRG 203, C.A**; it was held, confirming the long- held view that ***"proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. The Court would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong as to leave only a remote possibility in his***

favour which can be dismissed with the sentence, 'of course it is possible, but not at all probable', the case is proved beyond reasonable doubt, but nothing short of that will suffice."

In assessing the evidence, the Court would have to apply what is known as the three-tier test to each of the elements of a crime.

In the case of **THE REPUBLIC v. FRANCIS IKE UYANWUNE [2013] 58 GMJ 162, C.A,** it was held per His Lordship Dennis Adjei J.A that;

"The law is that the prosecution must prove all the ingredients of the offence charged in accordance with the standard burden of proof; that is to say the prosecution must establish a prima facie case and the burden of proof would be shifted to the accused person to open his defence and in so doing, he may run the risk of non- production of evidence and/ or non-persuasion to the required degree of belief else he may be convicted of the offence. The accused must give evidence if a prima facie case is established else, he may be convicted and, if he opens his defence, the court is required to satisfy itself that the explanation of the accused is either acceptable or not. If it is acceptable, the accused should be acquitted, and if it is not acceptable, the court should probe further to see if it is reasonably probable. If it is reasonably probable, the accused should be acquitted, but if it is not, and the court is satisfied that in considering the entire evidence on record the accused is guilty of the offence, the court must convict him. This test is usually referred to as the three- tier test".

On the three-tier test and its other renditions on what is expected of the trial court in relation to the evaluation of the evidence, please see;

- **FAISAL MOHAMMED AKILU v THE REPUBLIC (SC) (Unreported) Criminal Appeal NO. J3/8/2013 dated 5th July, 2017**

(Available online at *ghalii.org)*

- **R v ANSERE [1958] 3 WALR 385– CA;**
- **DARKO v THE REPUBLIC [1968] GLR 203- CA;**
- **KWESI v THE REPUBLIC [1977] 1 GLR 448- CA;** and
- **LUTTERODT v C.O.P. [1963] GLR 429– SC.**

What are the elements that the prosecution had to prove and the evidential issues to be dealt with?

The elements required to be proved will be elucidated in each of the offences in general and then an assessment made as to whether the prosecution has been able to prove the elements or ingredients. In doing so, I shall also assess the defence mounted by the accused persons in each case. In the case of A2, the defence will be assessed in the light of questions put in cross-examination made on his behalf, his statements and then in his own evidence heard in this Court.

In the case of A1, the defence available to her will be as put across in her case by way of cross-examination of the prosecution witnesses and her statements to the police.

In furtherance of this objective, I shall deal with similar offences together.

In the matter of the submission of no case which was ruled upon by this Court, in the case of **THE REPUBLIC v. AARON KWESI KAITOO (SUIT**

NO.FTRM/198/14) dated 23 day of May, 2017) the Accused/Appellant, raised the issue of the failure of this Court to deal with the charges individually (or failing to address the charges in accordance with each count) in assessing the case among others in an interlocutory appeal regarding the decision of this Court directing him to open his defence.

The Court of Appeal (Her Ladyship Mariama Owusu JA (as she then was) presiding) unanimously held that there was no such need when the charges are so inter-related.

(See the decision of the Court of Appeal in the case of AARON KWESI KAITOO v. THE REPUBLIC in Suit No.H2/25/2017 dated the 26th of April, 2018) (reported online on *dennislawgh* as [2018] DLCA 4485).

In any case, there are many reported and unreported Judgments in our books and on our electronic portals. There has never been a requirement that each count in a criminal case, be dealt with piecemeal, count by count. Such an approach would be tedious and burdensome, especially for a case such as this involving I therefore will not be discussing the law and the evidence on a piecemeal basis by discussing the charges count by count.

I shall deal with similar offences as couched in the charge sheet together.

I shall therefore deal with the charges related to stealing together as follows;

- Counts 1, 2,3,4,15, 24, 25, 26,27, 28, 29 30, 31, 32, 33 34 and 35- on the charge of Stealing against A1;

- Counts 5, 7, 9, 11,13, 16, 20 and 22- on the charge of Conspiracy to Steal against A1 and A2;

- Counts 6,7,8, 10, 12, 14, 17, 18, 19, 21 and 23 on the Charge of conspiracy to steal and Stealing Against A1 and A2;

The other charges will also be discussed as follows;

On the charges related to the offence of causing financial loss to the state and its inchoate;

- On counts 36, 37, 38, 39, 40, 41, 42, 46, 47, and 64:- on the charge of Wilfully Causing Financial Loss To The State Against A1;

- On counts 43, 45, 48, 52, 54, 56, 58, 60, 61, 62, 65 and 67 :- on the charge of Conspiracy to Wilfully Cause Financial Loss to the State against A1 and A2;

- On counts 44, 46, 51, 53, 55, 57, 59, 63, 66 and 68 on the charge of Wilfully Causing Financial Loss to the State against A1 and A2.

After having discussed the law and evidence relating to the counts under which both accused persons have been charged, I shall proceed to deal with the rest of the charges viz;

- Counts 69,70 and 71 on Causing Loss to Public Property against A1;

- Counts 72 and 73 on Improper Payment of Public Funds against A1;

- Count 74- Unauthorised Commitment Resulting in Financial Obligation for the Government against A1;

- Counts 75 and 78 on the charge of Money Laundering against A1;

- Counts 76 and 77 on the charge of Money Laundering against A1 and A2; and then

- Counts 79 and 80 on Contravention of the Public Procurement Act against A1 :

ON THE CHARGES OF CONSPIRACY TO STEAL AND STEALING:

ON WHAT WOULD CONSTITUTE "CONSPIRACY" UNDER OUR LAW:

The law on the charges of conspiracy to commit crime (in this case, Stealing) and the substantive offence of Stealing will be discussed together, since they overlap.

In the relatively recent decision, the case **FRANCIS YIRENKYI v. THE REPUBLIC (Criminal Appeal No. J3/7/2015 dated the 17th of February, 2016,** the Supreme Court, Dotse JSC presiding, concluded, regarding the position of the law on a conspiracy charge that, in making the decision leading to the success of the appeal, the effect of the Revised Edition Act, 1998 (Act 562) on the definition of Conspiracy came into focus.

Whereas the old formulation in Section 23(1) of Act 29 required two or more persons to **agree or act** together for a common purpose, the new

formulation requires them to **agree <u>to</u> act** together for a common purpose.

That sections states;

Section 23—Conspiracy.

*(1) Where two or more persons agree to act together with a common purpose **<u>for or in committing or abetting a crime</u>**, whether with or without any previous concert or deliberation, each of them is guilty of conspiracy to commit or abet that crime, as the case may be.*

(Emphasis mine)

The Supreme Court has held that the new formulation in section 23(1) of Act 29 is the law on conspiracy in Ghana and, until that formulation has been changed by constitutional amendment or recourse to the Supreme Court, the changes brought about by the work of the Statute Law Revision Commissioner are valid and remain the laws of Ghana.

In effect, the definitions of conspiracy based on previous decisions have failed to be good law.

A case of conspiracy without proving that the persons involved agreed to act together to commit the offence shall fail. It is however not a defence for an accused person who is charged for conspiracy to state that he did not have prior or previous concert or deliberation with the other accused persons to commit the offence where there is **evidence** that they agreed to act together to commit the offence.

(See Dennis Dominic Adjei: Contemporary Criminal Law in Ghana at page 89).

Further, in the case of **FAISAL MOHAMMED AKILU v. THE REPUBLIC (SC) (Unreported) Criminal Appeal NO. J3/8/2013 dated 5th July, 2017** , the Supreme Court per Appau JSC, in a unanimous decision held, in sum that by the definition of conspiracy set forth in section 23(1) of Act 29/60, a person can be charged with the crime even if he did not participate in its accomplishment if it is established that, prior to the crime's actual commission, he agreed with another person or group of persons with a common purpose for or in committing or aiding that crime.

However, the details of the conspiracy accusation would read as follows when there is evidence that the defendant really participated in the crime: "he acted together with another or with others with a common purpose for or in committing or abetting a crime." This ambiguous definition of conspiracy results from the incontrovertible fact that it is nearly never easy if not impossible to prove.

It must not be lost on us that there is an aspect of conspiracy which has to do with abetment of crime, where, as the legislation is couched, the agreement to act together is done with the common purpose for or in committing or abetting a crime.

Section 20 of Act 29 which explains what Abetment of a criminal offence is states;

(1) ***A person who, directly or indirectly, instigates, commands, counsels, procures, solicits, or in any other manner purposely aids, facilities, encourages, or promotes, whether by a personal act or presence or otherwise, and a person who does an act for the purposes of aiding, facilitating, encouraging, or promoting the commission of a criminal offence by any other person, whether***

known or unknown, certain, or uncertain, commits the criminal offence of abetting that criminal offence, and of abetting the other person in respect of that criminal offence.

In the Introduction to Chapter 6 of her book, **THE GENERAL PART OF CRIMINAL LAW- A GHANAIAN CASEBOOK VOL. 2**,at Page 489 on Inchoate Offences and accessorial liability in relation to abetment, Prof. Henrietta J.A.N. Mensah – Bonsu explains the concept of abetment very succinctly. The concept cannot be explained in a manner better than the learned author put it;

"The crime of abetment is committed when a person renders assistance to another for the purpose of committing a crime, and thereby makes a contribution to the doing of a criminal act. .....Rules on accessorial liability thus ensure that each of these people would be liable for the assistance rendered, for perhaps, without their individual contributions, the principals may never have attempted the crime."

She continues at pages 490-491 by stating in respect of S.20(1) of Act 29;

"This is a long list of acts that could render one an accessory to a crime. As long as one shares the mens rea of the offence, no act is harmless if done to further the objects of the criminal enterprise."

From the above principles and the tenure of the section, the prosecution is expected to prove that the A2 agreed to act together with A1 with a common purpose to commit the offences listed under the charges with the inchoate offence of conspiracy.

Further, where the conspiracy charge is hinged on an alleged acting together or in concert, the prosecution is tasked with the duty to prove or establish the role each of the alleged conspirators played in accomplishing the crime."

These recent decisions discussed immediately above will be the foundation of the assessment of the evidence before the court for a determination to be made as to whether the prosecution has satisfactorily led prima facie evidence against A1 and A2.

At the end of the day, without being technical or condescending, it would seem to me this the Court, in assessing the charge of conspiracy should look more to substance than form. The court ought to be satisfied that the evidence as is satisfies the burden of proof against each of the accused persons per the role each of them is alleged to have played in the scheme of things.

THE LAW ON STEALING:

Stealing has been defined in section 125 of the Criminal Offences Act, 1960 (Act 29) defines stealing as follows:

> ***"a person who steals dishonestly appropriates a thing of which that person is not the owner".***

Therefore, for the prosecution to succeed in establishing a *prima facie* case for the offence of stealing against the accused, the prosecution shall prove that the accused person was not the owner of the money he or she is alleged to have stolen, the accused appropriated the money without the consent of its owner, known or unknown, and that the appropriation by the accused was dishonest.

The decisions in the cases of ***Osei Kwadwo II v the Republic [2007-2008] SCGLR 1711*** and ***Ali and Others v the republic [1992] 1 GLR 570*** have authoritatively stated that the three ingredients which the prosecution is required to prove for the offence of stealing are that the accused has appropriated a thing, the thing was dishonestly appropriated by the accused, and the accused is not the owner of the thing which he dishonestly appropriated.

To sum up then, the elements that the prosecution had to prove, prima facie are;

a. Appropriation,
b. Which was dishonest
c. Of a thing (In this case money)
d. Belonging to another person other than the accused persons.

Dishonest Appropriation of a Thing

Section 120 (1) of the Criminal Offences Act, 1960 (Act 29) provides the definition for "dishonest appropriation." The definition is in the following terms:

> *"An appropriation of a thing is dishonest if it is made with an intent to defraud or if it is made by a person without claim of right, and with a knowledge or belief that the appropriation is without the consent of some person for whom he is trustee or who is owner of the thing, as the case may be, or that the appropriation would, if known to any such person, be without his consent."*

Section 120 (1) of the Criminal Offences Act, 1960 (Act 29), contemplates two kinds or types of dishonest appropriation. The first type is where the appropriation is made with intent to defraud; and the

second type is where the appropriation is made without a claim of right and without the consent of the owner.

What that means, by the tenure of the law then, is that an appropriation with intent to defraud can amount to dishonest appropriation. Further, an appropriation without a claim of right or without the consent of the owner is an alternative definition which the section gives to the term "dishonest appropriation."

Dishonest appropriation can therefore be proven by appropriation with intent to defraud or appropriation without the consent of the owner. Thus, proof that an accused person appropriated the subject-matter of the charge with intent to defraud will by itself amount to dishonest appropriation. In the same way, dishonest appropriation can be proven by the lack of a claim of right or lack of consent of the owner to the appropriation.

The prosecution in a case of stealing may prove the fact that the appropriation was made without the consent of the owner, but if they fail in that attempt, they need not necessarily fail on the charge of stealing as a whole, so long as they manage to prove that the accused is not the owner of the subject matter of the charge and that the appropriation was made with intent to defraud.

In this case, A1 and A2 are alleged to have stolen various sums of money quoted in the charges and from the evidence led. The means by which the sums were stolen per the evidence before the Court so far are as follows;

a) **ON THE GH¢500,000 OBAATANPA MICROFINANCE LOAN REFUND (IN RESPECT OF A1) (COUNT ONE (1):**

In the case of A1, the testimony on record is to the effect that Obaatanpa Microfinance initially intended to obtain a loan to the tune of GH¢500,000 which they disinvested prematurely and returned the sum involved. According to PW2, Samuel Quansah, a Board Member of Obaatanpa Microfinance who said he was charged with dealing with MASLOC since is resident in Accra (per his evidence of 25/11/2019), previous interest on loans was 1.5% to 2% per month, but in the case of this GH¢500,000 which is the subject matter of discussion under this head, Obaatanpa Microfinance was informed that the interest would be 4% per month, a rate which they found to be on the high side, hence the decision to return the funds.

It is the case of the prosecution that the said sum of GH¢500,000 was acknowledged to have been received by A1 who then signed and gave Exhibit A, a letter acknowledging payment of the sum of GH¢500,000 to the said Obaatanpa Microfinance. From the case of the prosecution, the funds were dishonestly appropriated by A1 as there was no record of the payment made until the new management of MASLOC under PW1 demanded same from Obaatanpa, in consequence of which demand Obaatanpa produced Exhibit A in proof of the funds paid.

In her investigating cautioned statement dated 15th November, 2017 (Exhibit AM1) however, A1, says that she ***"cannot vouch that the letter was signed by me eventhough [sic] the signature looks like mine."***

In those circumstances, it was held that A1 had a case to answer regarding the GH¢500,000 in order that she throws light on whether or not the signature is hers and any explanation of whether or not she indeed received the GH¢500,000 as alleged.

I have, in discussing the burden of proof in this Judgment, alluded to the shifting burden where a prima facie case is made and the danger of non-production of evidence.

In this case, A1, before she could explain herself opted to abscond, thereby leaving this Court with no option than to assess her defence only in the light of cross-examination that she put up and her statements on caution.

In cross-examination of PW1, Stephen Amoah and PW2, A1 seems to have put up two defences.

In the first place, Counsel for A1, Mr. Agbesi Dzakpasu, questions the legal status of the entity, MASLOC in this wise;

Q: Is it the case that on your letter head, you are described as MASLOC, office of the President

A: Yes.

Q: Have you tried to sue anybody of MASLOC since you became the CEO?

A: Not that I can remember now.

Q: You cannot remember because MASLOC has no legal capacity, it is a department at the presidency.

A: I do not think that is a credible reason but I cannot remember not because of what counsel said because it has not gotten any legal backing but because I have been in office for about 2 and half years now. We have gone through a huge task of managing a lot of exercises.

Q: We can adjourn and come back hundred times but I am putting it to you that you and your legal team cannot come to this court with any document that shows that MASLOC has legal capacity.

Ms. Sarpong: *The language being used and the question itself is a legal question so if he can rephrase the question.*

Mr. Dzakpasu: *I cannot rephrase the question. My lady I am only putting it to him that, when we adjourn and come back hundred times, the witness and the legal team cannot come to this court with any document that shows that MASLOC has legal capacity.*

By Court: *The witness should answer the question anyhow he can but I think we all need to address on that.*

Q: We can adjourn and come back hundred times but I am putting it to you that you and your legal team cannot come to this court with any document that shows that MASLOC has legal capacity.

A: As much as I can recollect, I have not stated in any document that MASLOC has legal capacity and I would not be able to tell if MASLOC has legal capacity.

(Please see proceedings of 22/10/2019)

In answer to this defence this Court makes reference to section 120(2) of Act 29 which states;

(2) It is not necessary, in order to constitute a dishonest appropriation of a thing, that the accused person should know who the owner of the thing is, but it suffices if the accused person has reason to know or believe that any other person, whether certain or uncertain, is interested in or entitled to, that thing whether as owner in that person's right or by operation of law, or in any other manner; and a person so interested in or entitled to

a thing is an owner of that thing for the purposes of the provisions of this Act relating to criminal misappropriations and frauds.

Thus, from the tenure of the legislation, whether or not MASLOC is a legal person, is irrelevant. It is enough for the prosecution to prove beyond reasonable doubt that the funds involved did not belong to the one who has misappropriated it.

In fact, the illustration of section 120(2) of Act 29 clarifies;

*"**Subsection (2)** A person can be convicted of stealing by appropriating things the ownership of which is in dispute or unknown, or which have been found by another person."*

In that case then a person can, in the right circumstances, be convicted of stealing a thing found or one which is kept with such a person for safe custody.

The second defence put up by A1 seems to be an outright denial, or that she ***"cannot vouch that the letter was signed by me eventhough [sic] the signature looks like mine."***

This Court has to assess the document as is and make a determination as to whether it satisfies the requirement. In my view, the document does satisfy the evidential requirement, especially in the light of the statement of A1, that she ***"cannot vouch that the letter was signed by me eventhough [sic] the signature looks like mine..."*** and her absence when required. This Court is not unaware of the fact that there is no obligation on an accused person to adduce evidence to prove his or her innocence.

In **BRUCE-KONUAH v. THE REPUBLIC [1967] GLR 611**, the learned Amissah JA stated inter alia that;

"Barring the well-known exceptions, an accused is under no obligation to prove his innocence. The burden of proof of the accused person's guilt is on the prosecution..... A lot would depend upon the relative strength of the prosecution's case considered on its own....."

When the prosecution has led documentary evidence as against oral, it will be difficult, in the light of the rules of evidence, to reject the documentary evidence in favour of the oral evidence, all things considered. The law is well settled that documentary evidence should prevail over oral evidence, especially if the document is proved to be authentic.

Please see: **FOSUA & ADUPOKU v. ADU POKU MENSAH[2009] SCGLR 310**

In **GLIGAH &ATISO v. THE REPUBLIC [2010] SCGLR 870**, it was held that Where a question boils down to oath against oath, especially in a criminal case, the trial Judge should first consider the version of the prosecution, applying to it all the test and principles governing credibility of witnesses, when satisfied that the prosecution's witnesses are worthy of belief, consideration should then be given to the credibility of the accused's story, and if the accused's case is disbelieved, the Judge should consider whether, short of believing it, the accused's story is reasonably probable.

In the instant case, I find, having regard to the oral and testamentary evidence before the Court, in the light of the law, and the defence offered by way of cross-examination of A1 and her statements to law

enforcement officers, that the prosecution has been able to prove her guilt on Count one.

A1 is accordingly convicted on Count One.

b) ON THE GH¢50,000 TAKEN BY PW4, SAMUEL NEEQUAYE AND HANDED OVER TO A1 (COUNT 15)

There is also the alleged dishonest appropriation of GH¢50,000 which the prosecution says was obtained from MASLOC funds by Samuel Neequaye, A1's driver (PW4) and was collected by A1 who did not account for it. In her statement of 20th June 2017 (Exhibit AM), what A1 says is that she has no recollection of it.

The evidence of PW4, adduced on 31/1/2020 was to the effect that he went to A1 and confronted her with information that he had from EOCO that she (A1) had denied receiving the GH¢50,000 from him. According to the witness, A1 admitted it and that A1's husband and housemaid were in the house.

What is quite bothersome though is that when given the opportunity to cross-examine PW4, very little questioning was done.

The failure to cross-examine the witness on this very significant matter would adversely affect A1.

On the legal effect of failure to cross-examine on material facts, in the case of **HAMMOND v. AMUAH & ANOR [1991] 1 GLR 89**, it was held that when a party had given evidence of a material fact and was not cross-examined upon it, he needed not call further evidence of that fact. Failure by the defence to cross-examine amounted to an admission by the defence. In that case, the only occasion when the defence sought

to challenge the figures were in the counsel's written addresses. That was not legally permissible because it was improper for counsel to address on matters on which no evidence had been led.

SEE ALSO

- **FORI V. AYIREBI [1966] G.L.R. 627, S.C.;**
- **QUAGRAINE V. ADAMS [1981] G.L.R. 599, C.A.**
- **TAKORADI FLOUR MILLS V. SAMIR FARIS [2005-2006] SCGLR 882**

In the circumstances, I hold that the prosecution has ably proved Count 15 against A1 beyond reasonable doubt.

A1 is accordingly convicted on Count 15.

c) <u>ON THE OTHER COUNTS BORDERING ON CONSPIRACY TO STEAL AND STEALING:</u>

These charges are relative to the following:

- Counts 2,3,4, 24, 25, 26,27, 28, 29 30, 31, 32, 33 34 and 35- on the charge of Stealing against A1;
- Counts 5, 7, 9, 11,13, 16, 20 and 22- on the charge of Conspiracy to Steal against A1 and A2;
- Counts 6,7,8, 10, 12, 14, 17, 18, 19, 21 and 23 on the Charge of conspiracy to steal and Stealing Against A1 and A2;

There is also the allegation by the prosecution that various sums of money involving certain sums to be used for the payment of funds intended to be used for sensitization and monitoring programmes amounting to GH¢2,044,780.00 which the prosecution says were not

used for their intended purpose. The Forensic Audit Report put in evidence as **Exhibit AE is** replete with this and other such findings.

From the Forensic Audit Report, A2, Daniel Axim is alleged to have withdrawn an amount in cash of about GH¢1,550,000. A1 in his statement (Exhibit AL) says that the said sums of money, the payment vouchers of which are quoted in his statement on caution dated 15th May, 2017 were collected and handed over to A1 in her office as he was instructed to do. He however acknowledges that he received a "gift" of GH¢20,000 from A1.

In these circumstances, where money was obtained for the purpose of sensitization and monitoring programmes which the prosecution denies having taken place, the burden would be on the accused persons who obtained the money to prove the positive that the funds were used for their intended purposes.

In the Court of Appeal case of **ABODAKPI v. THE REPUBLIC, cited supra,** the Court of Appeal stated;

It is trite learning that "where knowledge of a fact was peculiarly within the knowledge of an accused person a negative averment was not to be proved by the prosecution but on the contrary the affirmative must be proved by the accused as a matter of defence."

And also, that;

"I have always understood it to be a general rule that if a negative averment be made by a party which is peculiarly within the knowledge of the other the party within whose knowledge it lies and who asserts the affirmative is to prove it and not he who avers the negative"

In the circumstances, the burden would be on the accused persons who assert positively that the monies were used for their intended purposes, and who, per the case of the prosecution were supposed to have applied the funds to sensitization and monitoring programmes which the prosecutions says there is no evidence of that they did, to prove or at least show enough evidence to raise a reasonable doubt by what they assert.

In the case of **THE REPUBLIC v. PHILIP ASSIBIT & ABUGA PELE (Suit No FTRM 122/14 dated 23rd February, 2018,** (affirmed by the Court of Appeal in **PHILIP AKPEENA ASSIBIT v. THE REPUBLIC (SUIT No. H2/23/2018 (CA) dated 13th February, 2020,)** this Court had to make a decision based on similar circumstances, in which it had been alleged that workshops had been held across the country for some youth, evidence of which was not produced. It was held that since the 1st accused person had alleged that his company had held these workshops for which significant sums of money had been paid, he ought to produce evidence that these workshops indeed took place. This Court stated inter alia that;

"It is also unfortunate that no other evidence of these workshops etc. are available to the court at this time. For instance, if there were feasibility studies that A1 undertook, did he administer questionnaires? If he did, could he produce any draft of the questionnaires? If workshops were held, where did these events take place? Were they in hotels or guest houses? Did he have any suppliers of food and beverages? Did anyone purchase stationery? Were they issued with receipts for these goods and services? Were photographs taken at these events? Did they have attendance sheets? Could anyone just give oral evidence of having participated in or benefitted from these consultancy services? I fear not...."

The unfortunate truth in case also is that although both accused persons allege that sensitization workshops took place, there is no evidence of such occurrences. A1 in her statements, especially Exhibit AM, claimed that the funds collected were applied for the purpose for which they were disbursed, but there is no evidence to back her claims. The evidence before the Court is that there was board approval of the sum of GH¢1,706,000 for sensitization of eighty-five thousand three hundred (85,300) would-be beneficiaries. Each beneficiary was to receive GH¢20 towards T& T and refreshment, yet there is not even one photograph, attendance sheet or even oral evidence of just one person, out of 85,300 to attest to the events having been held. What makes the situation even more unpalatable is the fact that some of the Heads of the MASLOC, in regions where the sensitization programmes were allegedly held, indicated that they could not confirm that sensitization programmes were done between January 2015 to 31st December, 2016.

(Please see for instance Appendix K series of Exhibit AE, Forensic Audit Report).

The role of A2, in all this, from the evidence put before the Court, was to author twenty-three (23) memos over the period which were approved by A1 and the disbursements made.

A2, in the circumstances, was required to show that he was conscientious in carrying out his duties as Head of Operations of MASLOC and indeed handed over the sums of money to A1 as he claims and for justifiable reasons.

In his defence, A2 explained, essentially that he was under an obligation to obey superior instructions. He explained to the Court that he was in the same class as A1's driver (PW4), and others who were named, on

the evidence, to have been asked collect cash to be handed over to A1 such as Nana Serwah Tawiah and Anita Gapher. He explained further that there have been instances that money was handed over to A1 without any documentation.

A2 says that he risked losing his job if he had dared to challenge A1.

A2 stated that MASLOC is a very peculiar institution because of the politicisation of their processes. According to him, the environment makes it difficult to follow ethics to the letter (or "the latter" as he put it).

In his statement on caution (Exhibit AL) which was written soon after his arrest, however, A2 said nothing about being pressured by the political environment in the MASLOC office and being afraid of losing his job if he had not conformed to it. He only states that he collected the funds for A1. He acknowledged that he would start the process by generating the memos on the instruction of A1 and the latter would approve same for payment.

The defences put up by A2, though, requires the analysis of two principles of law to determine whether he can be absolved of responsibility.

The first has to do with what is known in law as Causation and demonstrates *mens rea* or intent. This would settle the question of whether A1 as CEO of MASLOC could have had access to funds which she did not account for in respect of the charges involving her and A2 without the help of A2.

ON CAUSATION:

Section 11 of Act 29 provides in part;

11. Intent

(1) Where a person does an act for the purpose of causing or contributing to cause an event, that person intends to cause that event, within the meaning of this Act, although in fact, or in the belief of that person or both in fact and also in that belief, the act is unlikely to cause or to contribute to cause the event.

(2) A person who does an act ***voluntarily, believing that it will probably cause or contribute to cause an event, intends to cause that event, within the meaning of this Act,*** *although that person does not do the act for the purpose of causing or of contributing to cause the event.*

(3) A person who does an act of a kind or in a manner that, if reasonable caution and observation had been used, it would appear to that person
(a) that the act would probably ***cause or contribute to cause*** *an event, or*

(b) that there would be great risk of the act causing or contributing to cause an event, intends, for the purposes of this section, to cause that event until it is shown that that person believed that the act would probably not cause or contribute to cause the event, or that there was not an intention to cause or contribute to it.

Most of the Ghanaian authorities in respect of the rules on causation border on homicides but the point of the decisions cannot be lost on us.

In **ODUPONG v. THE REPUBLIC [1992-93] (Part 3) GBR 1038 (CA),** the accused person insisted that he did not intend to kill his wife but that she had been struggling with him over a gun which accidentally went off. The jury returned a guilty verdict.

On appeal, the Court of Appeal held that the conclusion of the jury was justified in that the accused person knew that when a gun is loaded (which gun he loaded), it will most probably bring about the death of a person. When he aimed and fired the gun, he must be deemed to have known for certain that the inevitable consequence of firing the gun at Asantewaa (his wife) was to bring about her death.

In the **REPUBLIC v. ADEKURA [1984-86] 2 GLR 345 (CA),** the appellant, a member of the erstwhile People's Militia, while manning a barrier at about 5:30 am, shot at a vehicle because the driver refused to stop. One of the bullets killed one of the passengers on the vehicle. The accused in his defence stated that he had only wanted to immobilise the vehicle. It was held that shooting a round of bullets at a moving car when visibility is poor and limited is a dangerous act and unreasonable in the circumstances. The court further held that the caveat in section 11(3) would be applicable or exculpatory if it is shown by the accused person that he had used reasonable caution and observation.

In this instance, at no point has A2 attempted to show, other than trying to save his own skin, any evidence which demonstrates that he used reasonable care and caution in writing the twenty-three (23) memos which were approved for huge sums of money to be disbursed for a purpose which he reasonably knew or ought to have known (by the second or third instance) that they would not actually be applied to.

On the matter of knowledge, the law is clear, and it is trite learning that knowledge may be actual, inferred, imputed or constructive.

In **ASAMOAH v. THE STATE [1962] 2 GLR 207, SC,** it was held, with regard to the standard of proof of knowledge, that it is not necessary for the prosecution to lead evidence of actual knowledge. Evidence from which the knowledge of the accused may be justifiably inferred is sufficient.

Where a person has the necessary information as to a certain state of affairs, this person is in ordinary language said to know.

In **REGINA v. DANT (1865) Cox CC 102, the** court affirmed the conviction of the accused for the manslaughter of the deceased for knowingly setting loose, a vicious horse close to a public foot path. The dangerous horse kicked the deceased which led to her death.

Where the ordinarily prudent person would have received the required information if he had taken the trouble to make enquiries, then knowledge would be imputed to anyone so placed who failed to make the necessary enquiries.

Where a person does not take steps to make enquiries because of an unwillingness to know the answer, that is, a cultivated state of ignorance (willful blindness). The knowledge would be constructed from the circumstances.

The other principle of law which needs to be analyzed relates to the concept of **superior instruction or orders.**

ON THE MATTER OF SUPERIOR INSTRUCTION OR ORDERS:

It must not be lost on us that the A2 is a highly-qualified professional who had a duty to perform as Head of Operations at MASLOC.

The A2 alleges that he, being a holder of an MBA in Petroleum Accounting and Finance, repeatedly had instructions (twenty-three times) from his boss, A1, to collect funds for sensitization programmes which were never held, and he continued to do so, all in the name of keeping his job.

The law, though, is that an illegal order of superior officer is no defence to a criminal charge when the Accused **person actively participated in the commission of the offence (in this instance, repetitively).** The fact that he was acting as a servant on the directions of superior officer whom he was bound to obey could not exculpate him from criminal liability.

In **AMPAH & ANOTHER V. THE REPUBLIC [1976] 1 GLR 403-423,** the appellants were executive director and accountant respectively of the Chamber of Mines. The second appellant, either together with the first appellant or one officer, C.B. of the Chamber, had authority to sign cheques for and on behalf of the Chamber. Between 1 July 1971 and April 1973, the two appellants, to the exclusion of C.B., exercised their right to sign cheques for and on behalf of the Chamber and were able thereby to convert various sums of money belonging to the Chamber for their own use. The appellants were consequently charged with twenty counts of stealing contrary to section 124 (1) of Act 29 and convicted by the circuit court. On appeal the defence of superior orders, however, was argued by counsel for the second appellant contending that the evidence before the court showed that the second appellant was inferior

in rank to the first appellant in the establishment of the Chamber of Mines and the second appellant was therefore duty bound to obey the orders and instructions of the first appellant; and that all those cheques were issued out on the instructions of the first appellant. So that, a defence of superior orders was clearly made out and the second appellant ought to have been acquitted.

The court in holding (4) stated as follows:

> *"Superior orders may be a defence to a member of the Armed Forces in cases where the orders were believed by the member concerned to be lawful and where the belief was a reasonable one, but strictly speaking, this type of defence does not extend to persons in civil employment ... Circumstances of this sort may go strongly in mitigation of sentence, but could not be the only basis for acquittal".*

The court further held that:

> *".....superior orders were not in themselves justification for committing an act that would otherwise be a legal wrong. To constitute this type of defence the belief in the legality of the order must be reasonable. The second appellant, in his capacity as accountant of the Chamber knew as a fact that the legal as well as the beneficial ownership in those funds was vested in the Chamber and not in the first appellant. He (second appellant) was not only a moving party in the frauds that took place, but he never entertained any belief that the first appellant was legally entitled to order him to engage in the dishonest appropriation of the funds of the Chamber. He could not under any circumstances be heard to say that he made a mistake, bona fide or otherwise, in thinking that the ownership in the funds was in the first appellant".*

See also:

- **PEARCE v. THE REPUBLIC [1968] GLR 211**
- **GLAH &ANOR v. THE REPUBLIC [1977] 1 GLR 434**
- **AMETEWEE v. THE STATE [1964] GLR 155**
- **YAOKUMAH v. THE REPUBLIC [1976] 2 GLR 147(CA)**
- **Rv. AMPONSAH 4 WACA 120**
- **THE REPUBLIC v. IBRAHIM ADAM & ORS (QUALITY GRAIN CASE) Per Afreh JSC sitting as an Additional High Court Judge in suit No. FT/MISC/2/2000 dated 28th April 2003.**

A2's excuses about a poor ethical and political environment at MASLOC and wanting to keep his job cannot serve as a good defence to escape liability for the offence charged, as a person of the accused's caliber ought to know. Even if it was true that he would have lost his job, or that the work environment was so politically controlled such that he could not have stood up to A1, it is clear that writing memos to found the issuance of funds which were never used for the purpose for which they were obtained, repeatedly, was an illegal act. A professional of his caliber cannot take refuge under such a defence.

After all, how can a person of his caliber determine to be essentially redundant in his office, taking unlawful instructions? What was his high qualification as an employee, the Head of Operations, for?

This Court will be setting a dangerously bad precedent, and not only for public and civil servants, if it overlooks this grave illegality on the part of A2. By law, everyone in the chain, who raises a memo, vets documents or signs them indicating approval, etc. is a contributor to the chain. Each person in the chain is equally contributing to events in the chain. Each person in the chain is equally responsible.

d) <u>ON FUNDS OBTAINED BY A1 FOR VICTIMS OF THE KANTAMANTO FIRE DISTASTER:</u>

There are other funds allegedly obtained by A1 which have raised questions worth answering in the Forensic Audit Report such as funds that were withdrawn from funds intended for victims of a fire disaster at Kantamanto totaling **<u>GH¢579,800</u>** (GH¢274,500 on 21st June, 2015) and GH¢305,300 on 13th June, 2015)

As discussed in previous paragraphs, A1 has not made herself available to raise reasonable doubt. Unfortunately, there was no real attempt in the cross-examination and A1's statements to offer any exculpatory evidence, other than the bare assertion that the funds were applied for the purpose for which they were intended. There is however no evidence showing for instance, cheques issued to these victims or some voucher they may have signed, or even any person coming forward to attest to it that he or she may have received any funds. The same lack of evidence that came up with respect to the phantom sensitization programmes are present here too.

This Court therefore holds **that A1 and A2 have been sufficiently proven, beyond reasonable doubt to have had sums of money belonging to MASLOC not properly accounted for, and are accordingly convicted on the charges of Conspiracy to Steal and Stealing in the counts set out viz;**

- **On** Counts 1, 2,3,4,15, 24, 25, 26,27, 28, 29 30, 31, 32, 33 34 and 35- on the charge of Stealing against A1;

- On Counts 5, 7, 9, 11,13, 16, 20 and 22- on the charge of Conspiracy to Steal against A1 and A2;

- Counts 6,7,8, 10, 12, 14, 17, 18, 19, 21 and 23 on the Charge of conspiracy to steal and Stealing Against A1 and A2;

The next set of charges will now be dealt with.

ON THE CHARGES RELATING TO WILFULLY CAUSING FINANCIAL LOSS TO THE STATE:

- **ON COUNTS 36, 37, 38, 39, 40, 41, 42, 46, 47, AND 64-ON THE CHARGE OF WILFULLY CAUSING FINANCIAL LOSS TO THE STATE AGAINST A1;**

- **ON COUNTS 43, 45, 48, 52, 54, 56, 58, 60, 61, 62, 65 AND 67 -ON THE CHARGE OF CONSPIRACY TO WILFULLY CAUSE FINANCIAL LOSS TO THE STATE AGAINST A1 AND A2;**

- **ON COUNTS 44,46, 51,53, 55,57,59, 63,66 AND 68 ON THE CHARGE OF CAUSING FINANCIAL LOSS TO THE STATE AGAINST A1 AND A2.**

Having discussed the law on the inchoate offence of Conspiracy, there is no need to rehash same under this head of this Judgment. The matter of what would constitute Willfully Causing Financial Loss to the State will be discussed under this head.

In this case, A1 and A2 are alleged to have conspired to and indeed willfully caused financial loss to the State contrary to Section 179A of the Criminal Offences Act, 1960 Act 29) (as amended).

Section 179A of Act 29 states;

Section 179A—Causing Loss, Damage or Injury to Property.

(1) Any person who by a wilful act or omission causes loss, damage or injury to the property of any public body or any agency of the State commits an offence.

(2) Any person who in the course of any transaction or business with a public body or any agency of the State intentionally causes damage or loss whether economic or otherwise to the body or agency commits an offence.

(3) Any person through whose wilful, malicious or fraudulent action or omission—

(a) the State incurs a financial loss; or

(b) the security of the State is endangered, commits an offence.

(4) In this section "public body" includes the State, Government of Ghana, public board or corporation, public institution and any company or other body in which the State or a public corporation or other statutory body has a proprietory interest.

In the case of **THE REPUBLIC v. PHILIP AKPEENA ASSIBIT &ANOR (CA), (SUIT NO. H2/21/2015 dated 16th November, 2017, the Court per HL HENRY KWOFIE JA (as he then was) (available on www.dennislawgh and www.elibrary.jsg.gov.gh)** delivering the decision affirming the holding of this Court on a submission of no case, on the matter of what would constitute a the elements of the offence of Causing Financial Loss, cited authorities;

"In the first case of prosecution under that section in the **REPUBLIC v. IBRAHIM ADAM AND OTHERS (2003 – 2005) 2 GLR 661** Afreh J.S.C. set out the essential elements of the offence of causing financial loss to the state under section 179A of Act 29 as:

a) Financial loss,

b) To the State

c) Caused through the action or omission of the accused.

i) Intended or deserved to cause loss; or

ii) Foresaw the loss as virtually certain and took an unreasonable risk of it; or

iii) Foresaw the loss as a probable consequence of his act and took an unreasonable risk of it; or

iv) if he had used reasonable caution and observation it would have appeared to him that his act would probably cause or contribute to cause the loss.

Also, in the case of **TSATSU TSIKATA v. THE REPUBLIC (2003 – 2004) SCGLR 1068, the Supreme Court held in holding 8 that:**

"(8) The word "wilful" as used in Section 179A(3)(a) of the Criminal Code, 1960 (Act 29), as amended by the Criminal Code, (Amendment) Act 1993 (Act 458), covered both intentional reckless acts that would end up in financial loss to the State, as well as acts with such consequences done with a bad or evil motive. R. v Sheppard [1981] AC 394 HL applied.

***Per Prof Ocran** JSC. The word "wilful" even in the statutory context, is capable of more than one meaning and that it is the context of the*

statute in question which will indicate what meaning to assign to it....[W]e conclude that even when used in criminal statute, the word "wilful" could, as a matter of law, cover cases in which a public officer voluntarily engages in a course of conduct which in fact injures the State financially, whether with an evil or malicious intent to injure the State, or simply actuated by a reckless and persistent disregard for laid down corporate and statutory rules, or as a result of sheer obstinacy, or as part of a bureaucratic culture of financial unaccountability. But it is also true that "wilful" may be used to describe an act which is done not only deliberately or intentionally, but in circumstances where the doer must also have intended or at least foreseen the probable consequence of their non-action. We are of the view that the first interpretation of "wilful" puts more teeth into the effort to reduce corporate lawlessness and lessen the potential incidents of financial loss to the State".

In this case, the evidence led to prove the allegation that by their actions A1 and A2 have willfully caused financial loss to the state, in addition to the sums of money which they have now been found to have dishonestly appropriated, relate to purchases made either by single source or restricted tendering methods for the procurement of;

a) 350 vehicles (made up of 100 33-seater buses, 100 Chevy Spark-lite saloon cars and 150 Chevy Avio saloon cars). According to the prosecution, the vehicles which were procured at the cost of **GH¢62,239,750** were too dear or expensive as compared to the market price resulting in same being unsaleable because of the price. In fact, the evidence states, that the same supplier was selling the vehicles to the public at prices way below what was offered to Government of Ghana. Yet another matter that came up

in the trial was the allegation that the payment was ordered to be made to the suppliers, MAC Autos Limited even before the contract was signed; and

b) An unexplained irregularity in the transaction between PINCO Limited and MASLOC for the purchase of 500 Samsung B310 dual sim phones at the unit cost of GH¢467.06 which price the Forensic Auditor, PW 6, Philip Baffour Awuah testified to have been inflated or over-invoiced. According to the witness, even at the time of their audit, after the expected inflation, the market survey that they did showed that that brand and specification of mobile phone ranged between GH¢100 and GH¢122.

According to the Audit Report (at page 14 of Exhibit AE), when the attention of the Procurement Manager, Head of Operations and Head of Finance at MASLOC was drawn to the apparent over-invoicing of the mobile phones they in turn told the audit team that they drew the attention of the former CEO, Mrs. Sedina Tamakloe Attionu to the unusually high quotation she had collected but that she dismissed their concerns that she had collected quotations for original/genuine phones and not fake phones.

In this case, no evidence was offered by A1 or A2 to offset (just at the evidential level of reasonable doubt) the proposition that funds had been lost to the State.

In the case of **A1 and A2, there** is no question that there was no value gained by the State in having paid for twenty-three sensitisation programmes which were in fact not held.

Further, there has been no evidence or explanation at all offered by A1 who rather chose to abscond, to proffer an explanation as to how items bought in large quantities have a higher unit cost than retail prices. It makes no commercial, economic or even common sense, that the mobile phones purchased in bulk cost three times or more what they would have cost if purchased unit by unit on retail. Where was the value for money?

The same issues arise with regard to the vehicles purchased from Mac Autos. The prosecution has offered cogent evidence to the effect that without any approval from PPA, the 1st accused person signed a contract with Mac Autos on **6th December, 2016** to supply MASLOC with 350 vehicles comprising of 150 Chevy Aveo Saloon, 100 Chevy Sparklite and 100 33-Seater Isuzu Buses. MASLOC applied for a tax waiver on all the vehicles. The unit price offered by Mac Autos to MASLOC for the Chevy Aveo was GH¢74,495 ($18,883.39), however investigations revealed that the actual retail price Mac offered for the same model within the same year without duty was **GH¢47,346.93 ($12,009.91).** The unit price offered for the Chevy Sparklite was GH¢65,095.00 ($16,500.63) when the actual price offered by Mac Autos within that same period without duty was **GH¢35,918.37 ($9,104.77**). For the Isuzu 33-seater buses the unit price offered to MASLOC was GH¢445,560 ($112,942.96) but the actual retail price without duty was **GH¢293,877.55 ($ 74,493.67).**

Although Exhibit AH, the contract between MASLOC and MAC AUTOS is supposed to have been entered into in November, 2016, the document was actually executed on 6th December, 2016 (per the witnesses to the signature page). The opening recital paragraph is not dated, for reasons unclear on the document.

A1 has stated in Exhibit AM dated 20th June, 2019, with regard to the Mac Autos;

"I am aware that to date, non [sic] of the cheques have been paid to MAC AUTOS for the GPRTU buses and cars...There were about 100 buses and 250 cars supplied by MAC AUTOS."

She offers no explanation in this instance also, about how vehicles purchased in large quantities rather cost more that they would have cost if they had been purchased in single units.

The evidence before the Court also shows that due to the high cost of the vehicles, the transport unions were not ready to buy them, so they had to renegotiate the prices downwards.

I have noted the questions put in cross-examination by Mr. Dzakpasu for A1, to the effect that the prices were reviewed downwards by the current management of MASLOC for politically connected beneficiaries, but a study of the cross-examination and the statements on caution offered by the A1 will reveal that no explanation has been offered till date about the peculiarly exceptional instance in this case where mobile phones and vehicles purchased in large quantities rather cost more than they would have cost if they had been purchased in single units.

In addition to these, there are obvious infractions of public financial regulations such as improper approval regimes, single sourcing in a socially and politically sensitive period in December 2016, payments of funds etc. which demanded an answer which neither accused person has been able to give.

There is also no doubt, on the law and the evidence, that loss was sustained by the State in respect of these transactions. No reasonable doubt has been raised by the accused persons to exculpate them.

The accused persons are accordingly convicted under this head viz;

- **On counts 36, 37, 38, 39, 40, 41, 42, 46, 47, and 64:- on the charge of Wilfully Causing Financial Loss To The State Against A1;**

- **On counts 43, 45, 48, 52, 54, 56, 58, 60, 61, 62, 65 and 67 :- on the charge of Conspiracy to Wilfully Cause Financial Loss to the State against A1 and A2;**

- **On counts 44, 46, 51, 53, 55, 57, 59, 63, 66 and 68 on the charge of Wilfully Causing Financial Loss to the State against A1 and A2.**

- **<u>ON COUNTS 69,70 AND 71 ON CAUSING LOSS TO PUBLIC PROPERTY AGAINST A1</u>**

A1 is charged under the above-quoted counts with causing loss to Public Property contrary to Section 2 of the Public Property Protection Act, 1977 (SMCD) 140.
The section states;

(1) A person who by carelessness, gross negligence or dishonesty misapplies or causes the dissipation of or loss or damage to public property, commits an offence and is liable on conviction to a term of imprisonment not exceeding five years or to a fine not exceeding one thousand penalty units or to both the fine and the imprisonment.

This charge is akin to the one discussed above relating to causing financial loss to the State. There ought to be evidence that A1, who is the subject of those counts has;

- by carelessness,
- gross negligence or
- dishonesty
- misapplied or caused the dissipation of or loss or damage to public property.

The case **of BONI AND ANOTHER v. THE REPUBLIC [1971] 1 GLR 454 (CA) would be of assistance in this instance. Although tried under a different enactment it is of relevance to determine what is required by way of** carelessness, gross negligence or dishonesty. In that case, it was held inter alia that the ingredient of proof of a "careless or dishonest" attitude towards such affairs was necessary. Liability to punishment under the section therefore depends upon the existence of *mens rea* and the test of carelessness is whether the accused was guilty of such culpable negligence as amounted to criminal misconduct deserving of punishment.

The requisite *mens rea* comes up again in dealing with this matter. Before I conclude on this limb, I shall apply the law regarding the concept of dishonesty in the Criminal and other offences Act, 1960 (Act 29) in relation to dishonest appropriation.

Section 120(1) of Act 29 states;

(1) An appropriation of a thing is dishonest if it is made with an intent to defraud or if it is made by a person without claim of right, and with a knowledge or belief that the appropriation is without the consent of some

person for whom he is trustee or who is owner of the thing, as the case may be, or that the appropriation would, if known to any such person, be without his consent.

By the same analogy, a misapplication, loss of or damage to property would be procured by dishonesty if there was the intent to defraud, or with the knowledge or belief that it was without the appropriate consent or if the consenting party where there is consent, did so without full disclosure or knowledge. I have discussed supra that there is evidence of dishonest appropriation by both A1 and A2 for reasons of lack of accountability for funds expended and over invoicing, whether by deliberation or carelessness. That necessarily, if unanswered, implies dishonesty or a lack of due care on the part of A1 who was the CEO of MASLOC.

Please see also the decision of the Court of Appeal in **ABUGA PELE v. THE REPUBLIC (Suit No. H2/7/19 dated 3rd December, 2020)**

There is no gainsaying in such circumstances as this, that there is sufficient evidence on the basis of the evidence already discussed even without more.

A1, though has disabled herself from being heard in offering an explanation and has spurned the opportunity given by this Court to participate in the trial and explain away the infractions put before this Court.

A1 is accordingly convicted under this head on Counts 69,70 and 71 on Causing Loss to Public Property.

- **<u>ON COUNTS 72 AND 73 ON IMPROPER PAYMENT OF PUBLIC FUNDS AGAINST A1</u>**

A1 is charged with Improper Payment of Public Funds contrary to section 96(1) (c) of the Public Financial Management Act, 2016 (Act 921). That section states;

96. (1) A person, acting in an office or employment connected with the procurement or control of Government stores, or the collection, management or disbursement of amounts in respect of a public fund or a public trust who ....

(c) is responsible for any improper payment of public funds or payment of money that is not duly verified in line with existing procedures...

commits an offence and is liable on summary conviction to a term of imprisonment of not less than six months and not more than five years or to a fine of not less than one hundred penalty units and not more than two thousand, five hundred penalty units or to both.

In this case, from the tenure of the legislation, the prosecution needs to have demonstrated, beyond reasonable doubt, that A1;

- Being a person in an office or employment with the procurement or control of Government stores,
- or the collection, management or disbursement of amounts in respect of a public fund or a public trust
- is (or was) responsible for any improper payment of public funds or payment of money
- that is (or was) not duly verified in line with existing procedures

In this case, it has been put before this Court, that A1, being the Chief Executive Officer or MASLOC had access to public funds which were

used in the procurement of various items and further that there were several payments made without due process by resort to single sourcing and restrictive tendering. There is also evidence of the funds being disbursed for items which the prosecution says were over-priced, and which has been so proven, which can be taken to be evidence of improper disbursement of public funds.

The discussion of the law and the evidence under the previous head will be relevant under this one as well. Another discussion will be needlessly repetitive.

As in the previous set of offences as well, A1 has been unable to provide sufficient evidence to explain her approach in the management of public funds and how there was value for money. She has made herself unavailable to this Court and has been unable to raise reasonable doubt.

In the circumstances, I hold that the prosecution has been able to discharge the burden of proof against A1 under this head. She is accordingly convicted on Counts 72 and 73 on Improper Payment of Public Funds.

- **ON COUNT 74- <u>UNAUTHORISED COMMITMENT RESULTING IN FINANCIAL OBLIGATION FOR THE GOVERNMENT AGAINST A1</u>**

A1 is also charged with Unauthorised Commitment Resulting in Financial Obligation for the Government contrary to section 96(1)(a) of the Public Financial Management Act, 2016 (Act 921). That section states;

96. (1) A person, acting in an office or employment connected with the procurement or control of Government stores, or the collection, management or disbursement of amounts in respect of a public fund or a public trust who ....

(a) makes an unauthorised commitment resulting in a financial obligation for the Government,...

commits an offence and is liable on summary conviction to a term of imprisonment of not less than six months and not more than five years or to a fine of not less than one hundred penalty units and not more than two thousand, five hundred penalty units or to both.

In this case, it has been settled that A1 was in an office which was connected with the procurement or control of Government stores, or the collection, management or disbursement of amounts in respect of a public fund which was the reason why she was in a position to procure vehicles, mobile phones, etc from State resources.

It is alleged that these payments and commitments, including the agreement with Mac Autos were done without due process and authorization. It has been already discussed, in this Judgment, the burden of proof where a negative, such as a lack of authority to undertake an event or action, is alleged as against a positive.

As was stated in the **DANIEL ABODAKPI case (cited supra)**, the party within whose knowledge it lies and who asserts the affirmative is to prove it and not he who avers the negative.

On the need for proof of positive averments please see also; the decisions of the Court of Appeal Accra in;

PHILIP AKPEENA ASSIBIT v. THE REPUBLIC (SUIT No. H2/23/2018 (CA) dated 13th February, 2020;

SUIT NO. H1/81/2019 entitled NYAI TRADING ENTERPRISE LTD. v. HFC BANK (GHANA) LTD. dated 15TH MAY, 2020.

And: CITIZEN KOFI ENTERTAINMENT CONCEPT LTD v. GUINNESS BREWERIES LTD [2012] 46 GMJ 167 (CA)to illustrate the burden of proof and its allocation.

In such circumstances, it was for A1 to adduce evidence to show that she had authority to make the commitments that resulted in substantial obligations to the Government to the tune of GH¢61,735,832.50.

The burden on the accused person, however, is not as high as that on the prosecution. The accused only needs to raise a reasonable doubt. Unfortunately, not to sound repetitive, A1 was absent and did not offer any proof of authorisation for the commitments she made despite having the opportunity to do so.

I therefore hold that the prosecution has been able to lead sufficient evidence for A1 to stand convicted. A1 is accordingly convicted on Count 74- Unauthorised Commitment Resulting in Financial Obligation for the Government.

- **ON COUNTS 75 AND 78 ON THE CHARGE OF MONEY LAUNDERING AGAINST A1**
- **ON COUNTS 76 AND 77 ON THE CHARGE OF MONEY LAUNDERING AGAINST A1 AND A2**

The charge of Money-Laundering is dealt with under **section 1(1) of the repealed Anti- Money Laundering (Amendment) Act 2014 Act, 874 .**

The relevant section in Act 874 stated;

"Money laundering

Section 1 of Act 749 amended

1. The Anti-Money Laundering Act, 2008 (Act 749) referred to as the principal enactment is amended by the substitution for section 1 of

"Money laundering

1. (1) A person commits an offence of money laundering if the person knows or ought to have known that property is or forms part of the proceeds of unlawful activity and the person (a) converts, conceals, disguises or transfers the property;

(b) conceals or disguises the unlawful origin, disposition, movement or ownership of rights with respect to the property; or

(c) acquires, uses or takes possession of the property.

(2) For the purposes of this Act, unlawful activity means conduct which constitutes a serious offence, financing of terrorism, financing of the proliferation of weapons of mass destruction or other transnational organised crime or contravention of a law regarding any of these matters which occurs in this country or elsewhere."

The interpretation section of the original enactment, i.e. Section 51 of Act 749 defines serious offence as;

"Serious offence" means an offence for which the maximum penalty is death or imprisonment for a period of not less than twelve months

The state of the law then of what the predicate offences (or unlawful activities) for the offence of money laundering would therefore be "***conduct which constitutes a serious offence, financing of terrorism, financing of the proliferation of weapons of mass destruction or other transnational organised crime or contravention of a law regarding any of these matters which occurs in this country or elsewhere.***

That Act has been replaced by the new **Anti-Money Laundering Act, 2020(Act 1044).**

Section 1(2) and (3) of the Anti-Money Laundering Act, 2020(Act 1044) states;

(2) A person commits an offence of money laundering if the person knows or ought to have known that a property is, or forms part of, the proceeds of unlawful activity and the person

(a) converts, conceals, disguises or transfers the property for the purpose of

(i) concealing or disguising the illicit origin of the property; or

(ii) assisting any person who is involved in the commission of the unlawful activity to evade the legal consequences of the unlawful activity;

(b) conceals or disguises the true nature, source, location, disposition, movement or ownership of, or rights to, the property; or

(c) acquires, uses or takes possession of the property knowing or suspecting at the time of receipt of the property that the property is, or forms part of the proceeds of unlawful activity.

(3) Where a person under investigation for money laundering is in possession or control of property which the person cannot account for and which is disproportionate to the income of that person from known sources, that person shall be deemed to have committed an offence under subsection (2)

A comparison of this new rendition with the old one under the old *Anti-Money Laundering Act, 2008 (Act 749) as amended by* the Anti- Money Laundering (Amendment) Act 2014 Act, 874 will reveal that the current provision has more far-reaching implications than the previous. Under the old Act, for instance, rendering assistance in a money laundering enterprise dealing with proceeds of crime would have amounted to an inchoate, being abetment of money laundering, but in the current legislation, rendering such an assistance would amount to the substantive offence of Money Laundering.

Section 63, the Interpretation section defines *"unlawful activity" viz;*

includes

(a) a serious offence;

(b) participation in an organised criminal group and racketeering;

(c) terrorism and terrorist financing;

(d) trafficking in human beings and migrant smuggling;

(e) sexual exploitation and sexual exploitation of children;

(f) illicit trafficking in narcotic drugs and psychotropic substances;

(g) illicit trafficking in arms; (h) illicit trafficking in stolen and other goods;

(i) corruption and bribery;

(j) fraud;

(k) counterfeiting currency;

(l) counterfeiting and piracy of products;

(m) environmental crime;

(n) murder, grievous bodily injury;

(o) kidnapping, illegal restraint and hostage-taking;

(p) robbery or theft;

(q) smuggling;

(r) tax offences;

(s) extortion;

(t) forgery;

(u) piracy;

(v) insider trading and market manipulation;

(w) any other similar offence or related prohibited activity punishable with imprisonment for a period of not less than twelve months;

Further, *"serious offence" means an offence for which the maximum penalty is death and the minimum penalty is imprisonment for a period of not less than five years";*

From the tenure of the legislation, and similar to that of the old legislation, any offence or unlawful activity which yields proceeds can be the subject

of a money-laundering charge, and, in that regard, the accused persons may have a burden, under certain circumstances, to show that assets in their possession or under their control or which the prosecution says is money which they cannot account for, were obtained legally or properly and that they are not proceeds of crime or a prima facie established illegal activity.

It is my view, therefore, that once the predicate offences of conspiracy to steal and stealing have been established and once stealing is an offence which yields proceeds, and once the two accused persons acknowledge that they actually benefitted from the offence a case for money laundering would also have been made.

Also of relevance on the subject of repealed legislations is the recent decision of the Supreme Court in **OBENG GYEBI v. THE REPUBLIC (Criminal Appeal No. J3/02/2021 dated 26th May, 2021) (reported on the online portal www.dennislawgh as [2021] DLSC 10691).**

See also: EDMUND ADDO v. THE REPUBLIC (Criminal Appeal No. J3/04/2022 dated 31st May, 2023 and the Review decision of the Supreme Court in Suit No. J7A/02/2023 dated 7th February, 2024)

In his book **CRIMINAL PROCEDURE IN GHANA (SECOND EDITION) the learned Dennis Dominic Adjei (JA)** makes a statement which is very relevant for our purposes at pages 234 to 235;

"The law is now settled that mere technicalities in a charge sheet do not occasion a miscarriage of justice and an appeal shall not succeed on mere technicalities unless it is proved that the technicality has occasioned a substantial miscarriage of justice. An accused person was charged and convicted on a repealed section of the law but the appeal was dismissed

based on the fact that the offence for which the accused was convicted was in another enactment and therefore did not affect the conviction.

See also: ASAMOAH v. THE REPUBLIC [1973] 1 GLR 186

In the Asamoah case, it was held at Holding 2 that where the enactment referred to in the statement of offence was non-existent, what had to be considered was whether the offence disclosed in the statement of offence, was at the time of the alleged offence known to the law. In the instant case, there was still the offence of selling above the controlled price, albeit created by N.R.C.D. 17 which had repealed Act 113. It was a mere technical error in the charge that instead of quoting N.R.C.D. 17 the repealed Act was quoted.

In the circumstances, once the offence of Money Laundering still exists in our law, the charge can properly subsist and once there is evidence of an offence that yields proceeds, the charge would be proper.

Please see the decision of the Court of the Court of Appeal in the case of **HALIDOU MOROU v. THE REPUBLIC (CA) CIVIL APPEAL NO. H2/5/2022 dated Wednesday, 23rd March, 2022 in** which the Court, speaking through the learned Justice Merley Wood JA stated inter alia that;

*"We agree with the trial judge when **she stated that upon a proper appreciation of the law that any offence which yields proceeds** and which is punishable by a term of imprisonment exceeding one year (excluding bribery and corruption which is now within the purview of the Office of the Special Prosecutor) is a potential predicate offence for money laundering."*

(Emphasis mine)

In the circumstances of this case, then, once A1 and A2 are unable to account for funds whose location would only be in their knowledge, it was held that they both had a case to answer to on the money laundering charges.

On his part, A2 acknowledges that he was only given GH¢20,000 by A1 when she got to know that he and his wife were battling childlessness. Whatever the reason, a salaried worker ought to question when a work colleague or boss gives them inordinately large sums of money, especially when the person has contributed to dishonestly siphoning off funds belonging to the institution. In my view, he knew that he was gaining from proceeds of crime. In any case, whether or not he personally benefited from the funds, by law, is irrelevant.

In the case of A1, as with the previous scenarios, has disabled herself from offering any explanation on the whereabouts of the funds that were realised from all the illegalities discussed in this Judgment. Neither accused person has been able to raise reasonable doubt.

A1 and A2 are accordingly convicted as follows;

- **Counts 75 and 78 on the charge of Money Laundering against A1;**

- **Counts 76 and 77 on the charge of Money Laundering against A1 and A2.**

The last set of counts will now be dealt with to conclude this Judgment.

- **<u>ON COUNTS 79 AND 80 ON CONTRAVENTION OF THE PUBLIC PROCUREMENT ACT:</u>**

There are two slightly distinguishable offences which will be dealt with together under this head.

Under count seventy-nine, A1 is alleged to have procured the supply of 350 vehicles from Mac Autos & Spare Parts Ghana Ltd using public funds without satisfying the prescribed conditions for single-source procurement contrary to Sections 96(1) and 40 (1)(a) of Public Procurement Act, 2003 (Act 663).

Under count eighty, A1 is alleged to have procured the supply of 350 vehicles from Mac Autos & Spare Parts Ghana Ltd using public funds without recourse to laid down procurement provisions contrary to Sections 96(1) and 14 (1)(a) of Public Procurement Act, 2003 (Act 663).

Sections 92(1), 40 (1)(a) and 14(1)(a) of Public Procurement Act, 2003 (Act 663) under which A1 is charged in count seventy-nine states;

Section 92—Offences Relating to Procurement.

(1) Any person who contravenes any provision of this Act commits an offence and where no penalty has been provided for the offence, the person is liable on summary conviction to a fine not exceeding 1000 penalty units or a term of imprisonment not exceeding five years or to both.

Section 40—Single-source Procurement.

(1) A procurement entity may engage in single-source procurement under section 41 with the approval of the Board,

(a) where goods, works or services are only available from a particular supplier or contractor, or if a particular supplier or

contractor has exclusive rights in respect of the goods, works or services, and no reasonable alternative or substitute exists;

Section 14(1)(a) of Act 663 also states;

Section 14—Scope of Application.

(1) This Act applies to;

(a) the procurement of goods, works and services, financed in whole or in part from public funds except where the Minister decides that it is in the national interest to use a different procedure;

In this case, the prosecution has led evidence that the proper procurement procedures were not followed in the acquisition of 350 vehicles as same was single sourced when the conditions for single or sole sourcing were not met. As stated copiously in this Judgment, the fact of the negative averment in the charges would place the burden on A1 demonstrate to the Court to the standard of raising reasonable doubt that she approved single-source procurement in accordance with the Public Procurement Act.

There is no evidence before the Court to justify the procurement of 350 vehicles by single-sourcing from Mac Autos & Spare Parts. One can also not ignore the very disturbing fact of the single-sourced vehicles being even costlier in this transaction than it was on the open retail market.

In such circumstances, without any further unnecessary detail in view of the discussions already copiously discussed in this Judgment, and A1 having failed or refused to participate in this trial to its conclusion and having offered no explanation to merit her actions, I hold that that

the prosecution has been able to prove Counts 79 and 80 of the charge sheet against A1.

A1 is accordingly convicted Counts 79 and 80 on Contravention of the Public Procurement Act, 2003 (Act 663).

SENTENCING:

In sentencing A2 who is present, I have borne in mind that A1 who is the main architect of this ignoble enterprise has managed to evade justice up to this point.

I have also noted that the Republic has done nothing, to the knowledge of this Court, to take advantage of international co-operation to bring her to justice.

A2 has to take the fall for A1 by his presence. That said, however, I do not want to set a bad precedent by ignoring the fact that certain classes of public and civil servants are gatekeepers and can help safeguard the public purse if they do their work faithfully.

The sentence against the accused persons also takes cognizance of the quantum of funds lost, the deliberation and enterprise with which the offences were committed and the fact that this type of white-collar crime is in the experience of this Court one too many. The Court will therefore, to curtail crimes of this nature, hand down a deterrent sentence to deter would-be professional criminals from copying the actions of the accused.

- Counts 1, 2,3,4,15, 24, 25, 26,27, 28, 29 30, 31, 32, 33 34 and 35- on the charge of Stealing against A1;

- Counts 5, 7, 9, 11,13, 16, 20 and 22- on the charge of Conspiracy to Steal against A1 and A2;

- Counts 6,7,8, 10, 12, 14, 17, 18, 19, 21 and 23 on the Charge of conspiracy to steal and Stealing Against A1 and A2;

A1 is sentenced to 10 years IHL
A2 is sentenced to 5 years IHL

On the charges related to the offence of causing financial loss to the state and its inchoate;

- On counts 36, 37, 38, 39, 40, 41, 42, 46, 47, and 64:- on the charge of Wilfully Causing Financial Loss To The State Against A1;

- On counts 43, 45, 48, 52, 54, 56, 58, 60, 61, 62, 65 and 67 :- on the charge of Conspiracy to Wilfully Cause Financial Loss to the State against A1 and A2;

- On counts 44, 46, 51, 53, 55, 57, 59, 63, 66 and 68 on the charge of Wilfully Causing Financial Loss to the State against A1 and A2.

A1 is sentenced to a term of imprisonment of three years and a fine of three thousand penalty units or in default an additional two years IHL;

A2 is sentenced to a terms of twelve months and a fine of one thousand penalty units or in default another 12 months.

- Counts 69,70 and 71 on Causing Loss to Public Property **against A1**;

A1 is sentenced to a custodial sentence of two years IHL and to pay a fine of 500 penalty units or in default 12 months imprisonment.

- Counts 72 and 73 on Improper Payment of Public Funds against A1;

A1 is sentenced to a custodial sentence of six months on both counts

- Count 74- Unauthorised Commitment Resulting in Financial Obligation for the Government against A1;

A1 is sentenced to a custodial sentence of six months

- Counts 75 and 78 on the charge of Money Laundering against A1;

- Counts 76 and 77 on the charge of Money Laundering against A1 and A2;

A1 to three years IHL and two thousand penalty units or in default another two years

A2 to two years IHL and five hundred penalty units or in default 12 months

- Counts 79 and 80 on Contravention of the Public Procurement Act against A1 :

A1 is sentenced to two years and a fine of one thousand penalty units or in default another twelve months imprisonment

The sentences are to run concurrently.

The Prosecution is directed to undertake forfeiture proceedings against the assets of the A1 in particular who received substantially all the money lost to the State.

(SGD)
AFIA SERWAH ASARE-BOTWE (MRS.)
(JUSTICE OF THE COURT OF APPEAL

CERTIFIED TRUE COPY

.....REGISTRAR
HIGH COURT 17-4-2024
GENERAL JURISDICTION, LCC-ACCR