

GHANA / JUDGMENT

Republic Vrs Adjei and Others

[2023] GHACC 249 (20 January 2023)

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IN THE CIRCUIT COURT HELD IN ACCRA ON FRIDAY, THE 20TH DAY OF JANUARY, 2023, BEFORE HER LADYSHIP MALIKE AWO WOANYAH DEY (HIGH COURT JUDGE) SITTING AS ADDITIONAL CIRCUIT JUDGE. SUIT NO: D2/347/2016 THE REPUBLIC VRS

1. SILAS ADJEI
2. KWADWO KUDEKOR
3. PATIENCE ADJEI
4. JAMES AFADZIE ACCUSED PERSONS PRESENT NANA ADOMA OSEI (SSA) FOR THE REPUBLIC RICHARD NOMBO SAKA FOR A1, A3 AND A4 EDDIE MACCARTHY FOR A2

JUDGMENT

The four accused persons have been charged with various offences ranging from Conspiracy to commit crime, namely stealing, contrary to sections 23(1) and 124(1) of the Criminal Offences Act, 1960 (Act 29), Stealing contrary to section 124 (1) of the same Act, Abetment of stealing contrary to section 20(1) and 124(1) of the same Act, Dishonestly receiving contrary to Section 147(1) of the same Act, unauthorised interference with electronic record contrary to section 125 of the Electronic Transactions Act, 2008 (Act 775) and Money Laundering contrary to section 1(1) of the Anti-Money Laundering Act 2008, (Act 749).

1 FACTS OF THE CASE The facts of the case as recounted by the prosecution are that the 1st and 2nd accused persons were employed as IT officer and IT Support Officer, respectively, by the complainant, a company known as Best Point Savings and Loans Ltd in Accra whilst the 3rd and 4th accused persons are a sister and brother in law respectively to the 1st accused person. In January 2014, the company realised that its Banking Software known as Bankers Realm, had some challenges; thus, its management decided to migrate to a new system known as X100. At the final stages of the migration, while the data was being validated, some discrepancies were discovered between the old and new systems that had been installed. The validation revealed that transactions summing up to one million two hundred and sixty-two thousand four hundred and ninety-six Ghana cedis and sixty pesewas (1,262,496.66.). Thus the company's management employed a consultant from Kenya to investigate the cause of the discrepancies. The consultant's investigations revealed that someone

had tampered with the system. That conclusion was corroborated by the engineers who manufactured the software. The outcome also revealed that the transactions were similar and emanated from four different accounts, two of which were registered in the name of the 3rd and 4th accused persons and the other two in the names of one Seth Asante @ Precious Havor and one Theophilus Aboagye @ Dennis Amankwa who are friends of the 1st accused person but are currently at large. Further investigations linked the 1st accused person as being the one who had fictitiously and unlawfully credited the four accounts with various sums of money from the backend, which he had deleted from the final database for migration unto the new system, thus causing the discrepancies. It was also revealed that the narrations on the transactions had been changed to read 'interest accrued paid' to make it seem as if the transactions had been done automatically by the system and all the audit trails had been deleted to cover up the activities of the accused persons. The 2nd accused person had also checked and performed transactions on the four accounts. It was also discovered that they had changed the names of their accomplices in order to cover up their trail. The company lodged a complaint with the police, and on 3rd May 2016, the 1st accused person was arrested at his hideout at Pokuase Amamole. When the police searched the 1st accused person's house, they found DVLA documents, several bank chequebooks, property documents and receipts, personal documents, a passport, ATM cards, import documents, ideal finance Investment documents, a defective Better Ghana Agenda laptop, an HP laptop amongst others. They also found a foolscap sales book for all vehicles owned and managed by the 1st accused person totalling eighteen (18). He led the police to arrest the 3rd and 4th accused persons at their hideouts in Kasoa and Dome. He also led the police to retrieve thirteen

- (13) vehicles. The police found that the 1st accused had registered one of the recovered and two unrecovered vehicles in his wife's name, and she admitted that the 1st accused gave the vehicles to her. Whilst in custody, two police officers aided A1 in disinvesting and cashing an amount of 195,233.72 with Ideal Finance. Later, on 26th July 2016, the 2nd accused person was also arrested on the company's premises. All the accused persons pleaded not guilty to the charge. Thus per law, the burden fell on the prosecution to lead evidence to prove the case against them beyond reasonable doubt. It should be noted that the accused person, at best, only need to raise a doubt in the case of the prosecution if they are called upon to open their defence. In order to fulfil that duty imposed on it by the law, the prosecution called five witnesses. They are PW1 KODJO ASARE Asante, Head of IT for Best Point Savings and Loans; Pw2 Martey Ago Mensah, an internal auditor; PW3 Nii Aryee Welbeck, an officer of Union System Global, an IT company; PW4 Emmanuel Kasera, Consultant ICT Engineer from Kenya working for a company called Extra Inch, PW5 Alice Lawson an investigator stationed at Lakeside District CID, Accra. 3 At the close of the case for the prosecution, the court ruled that all accused persons should open their defence to each charge levelled against them. At this point, I wish to state the evidence of the witnesses called by the prosecution. PW1 Kodjo Asare Asante testified that he was in charge as head of IT at Best Point Savings and Loans. The 1st and 2nd accused persons employed at different periods were all in the IT Department and under him. When they decided to change their banking software from

Bankers Realm to X100 in November 2015, they formed a team of IT staff, Audit and finance. When they were about to migrate the data from their banking system called Bankers Realm to X100, the 1st accused person was put in charge. The 1st accused was the one who handed over the database backup to the software engineers. A2 was also in charge of ATMs and served as a backup to A1. Once he was put in charge of the database, he was also to do the end of day and also took the backup and thus had it in custody and was duty bound to give same to the software engineers. However, the system could not balance, i.e. when the software engineers completed the migration from the Bankers Realm to the X100. The credit side could not balance with the debit side. The engineers tried to resolve the issue, but the imbalance was still in the system. They discovered that it concerned four accounts, and an engineer, Chemai Mark, was contracted; whilst in Kenya, he discovered that it was not an error but that the transaction belonged to an account that had been deleted. At that point, A1 resigned after he had absented himself from work and was given a query. Chemai Mark came down to Ghana, and the accounts identified were Patience Adjei, 3rd accused, James Afadzie, Dennis Amankwa and Precious Havor. It was discovered that at 10 pm, when all staff had left the bank, except for the IT team, from the logs that were picked, A1 went to check the statements of Patience Adjei. Though 100 cedis was used to open the account at 10:30 pm, the amount had increased to GHC61000.00. A1 used the same 4 procedure for all four accounts. By this time, an investigator from the CID was part of the team. After some efforts, he PW1 led the police to A1's house, where he was arrested. Silas (A1) told the team that he had not wasted the money and would return it. He also told the team that the house and some cars were purchased. That night seven of the cars were retrieved. When A1 was confronted with the four accounts, he confirmed knowing the 1st two but said he stopped transacting with the other two because they had duped him. He led the police to A3 and A4, who were also arrested. The consultant also found out that the accounts, namely Patience Havor and Dennis Amankwa, were duly opened as Seth Asante and Theophilus Aboagye, but those accounts were later amended, in which case the names and images were also changed. However, the signatures remained the same. The consultant confirmed these changes to have been done by A1 and A2. Upon that discovery, A2 was also picked up at his desk for questioning. Thereafter, he stopped work. Thus management terminated his appointment. Under cross-examination, he told the court that every user, including the IT staff, had their own ID with which they used to access the application interface on the system. Counsel for A1 A3 and A4 PW2 Martey Ago Mensah, an internal auditor at Best Point, also testified that during the migration from Bankers Realm to the X100 software, they discovered four accounts with various transactions that did not have account numbers and also the transaction details were strange. A consultant was employed, and he came out with an initial report that the accounts had been tampered with, and he suspected fraud. He also confirmed the names on the account as Patience Adjei, James Afadzie, Stephen Asante, which had been changed to Patience Havor and then Theophilus Aboagye, which had been changed to Dennis Amankwa. These transactions were fictitious because instead of showing cash paid or cash withdrawn, they instead had details of accrued interest paid, which aroused suspicion. The consultant managed to get the audit trail, and because whatever

somebody does is recorded on the system, he was able to find out 5 who had tampered with the accounts. The consultant confirmed after investigations that it was A1 Silas Adjei who had tampered with the accounts, thereby causing certain imbalances in the system. Before the discovery, A1 had tendered his resignation after he was queried about his absenteeism. Thus after the discovery of the fictitious transactions, a report was made to the police and A1 was arrested in his house. When A1 was taken to the Accra Central Police station, he confessed that he had taken the money and used some to purchase vehicles. He revealed that his other accomplices, A3 and A4, were his sister and his sister's boyfriend, respectively. He also said that he did not know the whereabouts of Seth Asante and Theophilus Amankwa and that they had duped him. A1 led the police to Dome after the market, and he showed the police and the Best Point team six vehicles, some of which were Sprinters and others were Benz buses. Regarding A2, he testified that it was discovered that it was not only A1 who was visiting those accounts frequently, but the consultant found out that A2 had also been visiting the said accounts frequently. He also stated that the fraud loss was discovered in 2016 and would not reflect in the financial report of 2014. The amount that had been stolen was 1.2 million Ghana cedis. PW3 Nii Aryee Welbeck is an IT specialist and works for global union systems. He testified that Global Union Systems provides banking software application, implementation, integration and disaster recovery. He knows A1 and A2 only. His company was employed to install a new software known as X100. An implementation Committee was set up made up of officers of Best Point and his company, and he was the team leader for the fieldwork, and the Best Point leader was PW1 Kojo Asare Asante. The committee's first work was to do a test migration, and A1 Silas Adjei was instructed to give them the backup for the migration. A1 helped set up the SQL server in their office because his office used an Oracle database. They then copied every data 6 from Best Point's server unto their oracle server. After that, his office worked on the copy, and everything was sent back to Best Point. After verifying with the test migration, some concerns were raised, which they worked on. Thereafter, his office requested another backup from A1 for the second migration, which was done successfully. In doing the second backup, they compared the content of the data to the first one given out, and when they found out that everything was the same, they did an incremental migration. This meant adding only the difference between the previous and the second. A third migration called the User Acceptance Test involved every team member checking to see if their request had been met in terms of functionality. With that one also, an incremental migration was done just to add on. A1 provided all the backups, and the backups consisted of everything in the system, including account information, customer information as well as transactions. The User acceptance test was successful. They had to go live, and a day was set aside. They requested the final backup, which A1 again provided. At this point, A1 advised him not to do the incremental migration, so he approached A1's boss, PW1 and told him about what A1 had said. His boss, PW1, told him not to listen to anybody but him and his team members. They tried to compare the two, i.e. the last and previous one, with the fourth one, but the emphasis was on the first backup. They realised that certain things were in the old but not the new ones. Thus because of that, he could not do the incremental migration. They had to do a full

migration by copying the content from the SQL to the Oracle. They realised that there was a trial balance on the Bankers Realm but not on the X100, which raised eyebrows. He said the trial balance meant that when one sums up the credit and debit, it could not balance on the X100, yet it balanced on the Bankers Realm. He told them that it was a forced balance; thus, they had to come out with proof that theirs was not balanced. On the transaction table, they realised that all the debit and credit were not the same; therefore, the balances table could also not be the same. 7 They discovered that four accounts in the first backup were not in the last backup and were omitted from the transaction table. He, therefore, extracted all those accounts which he gave to Best Point in Excel form. He tendered the said sheet as Exhibit A Continuing his evidence, he gave specific details of the transactions omitted as 1096 with the following accounts 0154578200147 had a total number of 366 with the amount of 521073.30, 02076188300241 had 305 transactions with an amount of 161266.60, 03078896000321 had 233 transactions with an amount of 460160.75 and the final account were 04079600643100 with 222 transactions with a value of 199996.66 All these transactions added up to 1096 with a total value of 1262496.66. He stated that that was the amount needed for the trial balance to balance on the X100. He also confirmed that two of the accounts belonged to Patience Adjei and James Afadzie. Under cross-examination, counsel for A1, A3 and A4 tried to suggest to him that since he was only concerned with the data, if the Bankers Realm software had errors he would not know since he did not know how that software worked. However, he insisted that since they were migrating transactions, once there had not been any tampering, it should remain what it was from one software to the other however, because the data on the last backup had been tampered with on the Bankers Realm, which caused the imbalances on the X100. He said he could not answer questions on Exhibit 1, which was tendered through PW1 by counsel for the 1st, 3rd and 4th accused because he does not work for the manufacturers of Bankers Realm. He also emphasised that the details of the General Ledger on the trial balance for customers could only be found in the customer accounts transactions, especially when the differences related to customer account balances on the trial balance. Counsel also tried to suggest to him that the fictitious transactions he claimed he found out were not disclosed in the financial statements of Best point Savings and Loans for 2014, 2015 and 2016, but he told the court that his work was not on those financial statements. Counsel for A1, A3 and A4 further suggested to him that the fictitious transactions he alleged he found out were not as a result of any backdoor deeds by A1 but clear 8 anomalies which Best Point Savings and Loans had admitted, which he resisted and stated that the work his outfit did rather exposed the rot that the company was sitting on. PW4 Emmanuel Kasera testified that he lives in Nairobi, Kenya. He works with Extra Inch as an ICT Engineer and Consultant. He spoke extensively on his qualifications, first as holding a degree in Bachelor of Science, a certified Information System auditor, a certified Oracle Professional and a Microsoft Certified Engineer. He testified further that Extra Inch is an ICT company which offers financial solutions to banks, Savings and Loans and Microfinance Institutions. They also offer services which include database Forensic Audit Services, support for core banking systems and training in a number of Countries not limited to Africa. He told the court about some of the work the company did for some companies,

including Harambee SAACO, the largest Savings and Cooperative Organisation in Kenya, which encompasses all employees of the government of Kenya Army, Pension authorities, amongst others. He testified that their work was to assist them with their core banking system known as Bankers Realm, which was also used by Best Point Savings and Loans. The said core banking system was supplied by a company called Craft Silicon. Their database audit task was to investigate, analyse and carry out a forensic database audit to ascertain the loss of funds. The SACCO had lost funds, and Extra Inch had to come in to help them unravel what led to the loss of money. He used to work with Craft Silicon, which was when he got to know Best Point Savings and Loans. Best Point employed Extra Inch sometime in April/May 2016. The terms of reference charged them to carry out a forensic database audit of their system. It was to ascertain the cause of variances and imbalances in the system. The second was what led to these variances touching on balances, imbalances, photographs and signatures. The third was to find out the person responsible for these imbalances, and the last was to give his findings to management. 9 When his company was engaged, he requested a backup of the database for every month from the period of January 2014 till towards the period March 2016. He was given a number of backup files, which formed information in its original state when the backup was taken to aid in the work. He worked on the database transaction log, which is an audit log of all user activities or actions carried out through the database by an ICT personnel. It reveals, through an audit tool, the date, time, and user computer action in a real-time environment. He then took an image which is the exact copy of A1's computer with all the files and settings because A1 was not available at the time, unlike the other staff. Finally, he took an image of a copy of the database server, which contains the exact contents and file settings of the database used by BPSL to enable him to compare and corroborate the database transaction log. With that, he was able to preserve the read-only files of the four steps described. He then created a database audit environment to enable him to perform his tasks independently from the bank's normal core banking system. Using the said environment and his audit tools, he was able to establish that there were database alterations of data which were not the same when he compared it to the Point when the backup was carried out. From the use of the tools, he was able to see the command that was responsible for the changing of names, photographs, balances, and others. Thus from the laptop of A1, he got some database commands in reference to the database operation. Significantly, he told the court that he discovered four customer accounts, namely James Afadzie, Patience Adjei, Theophilus Aboagye and Seth Asante and over the period from 2014 before the migration from the Bankers Realm to the X100 core banking system, the sum of over 1.2 million Ghana Cedis was withdrawn over the counter in various branches and some over ATMs. The log showed unauthorised credits of money transferred to the four accounts through the database of A1 and A2, which made money available to them which resulted in the bank losing funds directly. There were also alterations of photographs and signatures and a change in names that 10 led to two customers impersonating the original account holders. He revealed that in these four accounts, A1 and A2 accessed the accounts multiple times, some at night, 10:00 pm and 11 pm, and some very early in the morning, 5:00 am. Shortly after transferring monies into the accounts, the

customers withdrew them from their accounts, some close to 6 minutes from each other. According to him, through the audit trail balances, he noticed that most of the transactions were carried out by A1. A2 also authorised some cash withdrawal transactions that led to customers withdrawing funds. A2 also accessed the history of the two accounts that had been altered almost simultaneously, which meant A2 was aware of what was happening. He stated that he was able to establish that towards the changeover to the new system, there was a deliberate attempt to conceal and tamper with the said accounts, and he found that through a database instruction on A1's laptop. He tendered his report as Exhibit B and went through all the logs that showed that the transfers of money into the four accounts were done from the backend of the system by A1 and A2. He testified that he found out because of each bank staff member's unique code or password. Thus the audit trail revealed the anomalies and connected the alterations and all the anomalies to A1 and A2, who issued commands through the back end of the system as IT officers, thus making funds available to A3 and A4, who also on various dates withdrew the amounts over the counter and by the use of ATMs at various branches of the bank. He gave detailed accounts of the alterations made through the back end by A1 and A2. In summary, he stated that out of over 8,000.00 plus accounts, only four (4) had unauthorised funds that were availed through a set of database instructions by Silas Adjei. There was also unauthorised supervision of funds done at the branch by the user name Kudekor. The accounts were primarily accessed at night but were withdrawn the next day. In all, A4 accessed funds through the branches via tellers and withdrew an amount of 363500.00 at 33 locations. By using ATMs 88 times, he also withdrew funds close to GHC99000.00. Thus A4 was able to access a total amount of 11 GHC461641.75. The same applied to Patience Adjei. He noted that A4 opened his account at Mile 7 with 500 cedis whilst A3 opened hers with GHC100 but due to the actions of A1 and A2 through the database, A3 and A4 had access to funds which they did not deposit. PW5-D/Sgt Alice Lawson testified that BPSL lodged a complaint against the accused persons. Thus in April 2016, he investigated the complaint lodged by BPSL. With the help of the head of IT, Mr Asare and Audit Officer, Mr Ago Martey at the time, after several efforts, on 3rd May 2016, A1 was arrested in his house at Amoamatey. A search within the house revealed several chequebooks from different banks in the name of A1 and a company named SYLADJ Limited belonging to A1. They also found ATM cards, a laptop computer, documents covering his property, vehicle documents and other things. She testified that during the search, A1 opened up to him and his team members that he truly stole the money from BPSL whilst he was an IT officer there but had put the money to good use. He told the team he bought land, built the property, and invested some of the money. He then promised to return everything he had stolen. Thus the 1st accused person took the team to Dome, where he identified six vehicles, 3 Benz buses and 3 small taxis. At the office, A1 told the team that when he was working at BPSL, he realised that some monies were hanging in the system which was not attached to any particular account, so he thought he could take advantage of it. Thus he asked two of his friends, Seth Asante and Theophilus Havor, to open accounts with the bank. He then credited their accounts with money, after which he informed them about based on which they wrote cheques and cashed them at the counter without anyone suspecting.

According to A1, everything went well until his two friends cashed the money and absconded. He felt offended. Thus he stopped crediting their accounts and changed their names in the system. After that, he decided to use his sister A3 and her boyfriend A4 to open accounts with the bank. He credited their accounts with various sums of money. He writes a query for funds hanging in the system, and the system gives clearance, allowing him to credit their 12 accounts with various sums of money. He calls them on the phone to meet him at a location with their chequebooks, and he writes the amount of money he desires, and they would go to the counter and cash it. A1 then led the police to Kasoa Kalabule, where A3 and A4 were arrested. She testified that A3 narrated that sometime in 2014, A1 approached her to open the said account, and she was given an ATM and chequebook. She opened the account with only 100 cedis, but A1 credited her account, which she withdrew and shared with him. She also told them that she did not know how money came into the account, but she knows A1 usually credits her account. She also said she had not deposited any money herself. She also told the police that she suspected A1 was depositing the monies illegally, but she could not confront him. She also confirmed that her brother had acquired vehicles and built a building within a short period. A4 also had a similar narration as A3. She stated that their investigations revealed that A1 had invested the money at Ideal Finance. Thus, she extended her investigations to that institution, but A1 changed his mind. Upon instructions from her superior officer, she wrote to the FIC for the account to be frozen and whilst awaiting the response, she had information that the money had been taken out. She took A1 to that office with a team of police officers, and there they met ACP retired Dogbeda and Miss Rosemond Boateng, a relationship manager to A1. She told the police that a police officer escorted A1 to the office, and A1 surrendered the investment. She stated that on 8th August 2016, a police officer escorted A1 to meet her at Madina, where she handed them a cheque for 195,233.07. She was furnished with the number of the police officer, and when she dialled, it revealed the police officer as D/Corp Isaac Nartey, a member of their earlier investigative team. She narrated how the police officers assisted A1 in withdrawing the money and sharing same with them. Later, they returned an amount of 20,000.00. Ten vehicles were retrieved whilst an amount of 187600 was retrieved from A1 and deposited in the CID account lodged with the Bank of Ghana. She tendered the pay- in-slip as Exhibit F and F1. She also tendered the investigation caution statements of 13 A2 as Exhibit C and further statement marked as exhibit D. His charge statement was also tendered as Exhibit E. She also tendered the record of the vehicles she retrieved as Exhibit G. Under cross-examination, counsel for A2 suggested that money had to be paid before A2 was granted bail, which she denied vehemently and stated that A2 was ready to refund the money he had received from A1. She admitted that one of A2's investigation caution statement was not taken in the presence of an independent witness. THE DEFENCE OF THE ACCUSED PERSONS A1 testified and denied all the charges against him. He stated that the allegations that he passed fictitious transactions at the back end of the Bankers Realm system are unfounded and misconceived. It is his case that there were several structures put in place by BPSL such as Balancing Exceptional reports call over Reconciliation auditing both internal and external all of which were done daily, monthly and yearly. There were also surveillance

systems including CCTV cameras, access logins, main entrance, and back office ATM terminals installed to monitor staff and customer movements and activities. He further testified that the alleged fictitious transactions for the period are irreconcilable, especially considering the manner Best Point claimed he allegedly passed the purported transactions. It is also impossible because they could not pass the end of day, monthly, and yearly processes BPSL successfully ran throughout 2014 and 2015 without raising any issues. According to him, such fictitious transactions would have affected the books of BPSL, especially its financial statements or annual reports for 2014, 2015 and 2016. It is his case that looking at the manner in which Best Point carried out its migration exercise by moving all the anomalies and discrepancies of the balances from Bankers' Realm to X100 application, it has no basis for any balance discrepancy between Bankers Realm and X100 application against him. He denied being a database administrator and was never in charge of backups, as there was no specific officer in charge of backups. According to him, backups were kept on the 14 system, which had the database server installed and was available to all IT staff. He testified further that nobody could tamper with the content of a backup file. He tendered documents which he testified to that emanate from BPSL regarding their banking software and its workings to show that he could not have tampered with the system as alleged by the prosecution. Under cross examination, he still maintained that there was no way he could make changes to the system as testified to by PW4. A2 also filed a witness statement and testified on oath. A2 testified and was cross-examined extensively. In his evidence, he testified that he was employed as an IT officer by Best Point sometime in 2014 when the first accused informed him of an opening in the company. His role was as an IT support officer in ATM card production, rectifying issues with ATM vendors creating users, viewing accounts, and Hardware support, and on some occasions, he ran the end-of-day process. According to him, the end of day was automated and was done simply by giving a command on Banker's realm application. After the end of day, a backup process is taken for the day. He stated that he was not in charge of the database. Thus, he knows nothing about it. He further testified that sometime in 2015, the 1st accused person resigned and before that, he informed him of a vehicle with an engine problem and suggested that he should repair and use it since they were good friends. He said he did not think of anything untoward of such a gesture. Thus, he accepted it. He testified further that because he did not have funds to repair the vehicle, he took a loan of GHC8000.00 from Best Point and used part to refer the vehicle. He testified further that on 14th May 2016, he received a call from a police officer named Ike, who alleged that 1st accused had bought him a car and that he should bring the car to the police station. He explained that he neither bought the car nor was it a gift from A1. He repaired it and took it to the police station on 16th May 2016. At the 15 police station, he was questioned by Ike's boss about some properties owned by A1, and he denied Knowledge of those properties. Later, the police officer made him write his caution statement, which was not taken in the presence of an independent witness. The officer then called and asked him to call someone to bail him; thus, he called his uncle and signed a bail form. On 26th July, he was invited by the police officer to the head of finance of the Ghana police service, where they told him that if he told the truth, he would be used as a

prosecution witness instead of being prosecuted. He was detained again and charged with an offence of Conspiracy to Steal and Stealing a sum of GHC1262496.66 from BPSL, to his utter surprise and disappointment. He was questioned about the four accounts, including those of 3rd and 4th accused person. He testified that as an IT officer, he was to create users and view accounts in order to resolve issues reported by users. He said he did not have access to open an account and make changes to customer accounts or make changes to the accounts, such as deposits and withdrawals. The investigator then asked him for an amount of 20,000, which Silas gave him, but he denied receiving such an amount from Silas. The investigator then mounted pressure on him, and he told him that they had been supporting each other and the highest amount he had ever given him was an amount of GHC1000.00. The crime officer told him that should he bring the money that A1 gave him, he would be granted bail. On 28th July 2016, the investigator asked him for his bank account and led him to BPSL at Makola and Royal bank, where he was made to withdraw GHC1000.00 and 2,400.00, respectively. The following morning his brother brought GH 20,000, which the investigator took in addition to the GHC3400.00 after that, the investigator told him not to resume work because investigations were ongoing, and he complied, but on 28th September 2016, BPSL sent him a dismissal letter. Later the investigator took him to PIPs, where she made him write a statement again. 16 When he was cross examined by A1 he told the court that he did not conspire with A1 and also did not take any instructions from A1 in the manner described by the prosecution witnesses. A3 and A4 decided to exercise their right to silence. Thus they did not testify, and they did not call any witness. EVALUATION AND THE APPLICABLE PRINCIPLES OF LAW Before I proceed, it is pertinent to note that certain facts are not disputed. It is a fact that the 1st and 2nd accused persons worked for Best Point Savings and Loans (BPSL) within the period in contention, i.e. 2014 to 2016, until A1 resigned and the termination of A2's appointment. It is also not in dispute that both A1 and A2 worked in the IT department with designated duties. It is not in dispute that there was a change over from their banking software known as Bankers Realm to another one known as X100. Additionally, all staff at BPSL, including A1 and A2, had a unique code with which they worked, whether at the front end or the back end of their system. It is also not in dispute that upon A1's arrest and due to the outcome of his interrogations, A1 led the police to arrest A3 and A4. It is also not in dispute that A3 is A4's husband and a brother to A1. Additionally, upon their arrest, A2 gave a statement to the police, which he had not disputed. A3 and A4 also narrated the extent to which they participated in the withdrawals of the monies. It is also not in dispute that the amount of money lost by the bank is 1 million Ghana cedis. As stated early on, the first count against the first and second accused persons can be found under sections 23(1) and 149(1) of the Criminal Offences Act 1960, Act 29. The second count, which relates to stealing, shall be discussed in tandem with the first count since they intertwine. Section 23 (1) of the Criminal Offences Act 1960 Act 29 states as follows; 17 "Where two or more persons agree to act together with a common purpose for or in committing or abetting a criminal offence, whether with or without a previous concert or deliberation, each of them commits a conspiracy to commit or abet the criminal offence." Thus as its duty, the prosecution must prove the following ingredients;

1. The offence involved two or more persons.
2. These persons agreed to act together.
3. They acted together for a common purpose, i.e., to commit a crime or do an unlawful act or a lawful act by an unlawful means. In the case of Republic vs Eugene Baffoe-Bonnie and Others [2020] DLHC8774, Kyei Baffour J (he then was) was of the opinion that the new rendition of the offence of Conspiracy by the Statute Law Review Commissioner had narrowed the scope of the charge. Nevertheless, according to him, it was no defence for an accused to claim when found acting together with others to contend that it cannot be used as evidence of a prior concert or deliberation. According to the learned Justice, who is now a Court of Appeal Judge, any interpretation that appears to ignore the latter part of section 23(1) of Act 29 to the effect that "... whether with or without previous concert or deliberation" would have missed the import of the offence of Conspiracy as envisaged under the law. He went on to cite the case of Faisal Mohammed Akilu v The Republic [2017-2018] SCGLR 444 dated 5th July 2017, where the Supreme Court, through Apau J.S.C., threw more light on the new rendition as follows; "From the definition of conspiracy as provided under section 23(1) of Act 29/60, a person could be charged with the offence even if he did not partake in the accomplishment of the said crime, where it is found that before the actual committal of the crime, he agreed with another or others with a common purpose for or in committing or abetting that crime...However, where there is evidence that the person did take part in committing the crime, the particulars of the conspiracy charge would read he acted together with another or others with a common purpose 18 for or in abetting the crime" this double-edged definition of Conspiracy arises from the undeniable fact that it is almost always difficult if not impossible, to prove previous agreement or concert in conspiracy cases. Therefore, Conspiracy could be inferred from the mere act of having taken part in the crime where the crime was actually committed. Where the conspiracy charge is hinged on an alleged acting together or in concert, the prosecution is tasked with the duty to prove or establish the role each of the alleged conspirators played in accomplishing the crime." On the second count, the particulars of the offence read as follows; Silas Adjei, IT officer, and Kwadwo Kudekor, IT support Officer between January 2014 and March 2016 in Accra in the Greater Accra Region, dishonestly appropriated the sum of GHC1262496.66 the property of Best Point Savings and Loans Limited. The law on stealing can be found at section 124(1) of the Criminal Offences Act, 1960 Act 29 as follows; "A person who steals commits a second-degree felony." Further to this is section 125 of the same Act, which defines stealing thus: "A person steals who dishonestly appropriates a thing of which that person is not the owner." In the case of Ampah vs The Republic [1977] 2 GLR 171, the appellant appropriated sums of money which belonged to his employers, and he was convicted. On an appeal to the Court of Appeal, the court set down the essential elements of the offence of stealing as dishonesty, appropriation, and property belonging to another. Thus the essential elements to be established by the prosecution under this offence are as follows;
 1. That there has been an appropriation of a thing by the accused.

2. That the appropriation was dishonest. 19
3. That the property or thing dishonestly appropriated belonged to another person. See also the case of Republic v Halm and Anor [1969] CC 155 Court of Appeal dated 7th August 1968, unreported but digested in 1969 Current Cases paragraph 155. Also, Criminal Law in Ghana P.K Tsumasi page 305 paragraph 2. See also Lucien v The Republic [1977] 1GLR 35 The element of the offence I wish to discuss first is whether the money belongs to the accused persons. Under this element, the prosecution must establish that the monies belonged to another person. This ingredient of stealing requires the prosecution to prove that the accused is not the owner of the money stolen. The courts have held that proof of the ownership of the thing allegedly stolen as the property of the named person mentioned in the particulars of the offence is not necessary. What was essential was the fact that the accused was not the owner of the items. It is also important to note that section 122 (2) of the Criminal Offences Act, 1960 (Act
- 29) defines appropriation as; “An appropriation of a thing in any other case means any moving, taking, obtaining, carrying away, or dealing with a thing with intent that a person may be deprived of the benefit of the ownership, of that thing or of the benefit of the right or interest in the thing, or in its value or proceeds, or part of that thing.” Section 120(1) of Act 29 reads; 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 a claim of right and with a knowledge or belief that the appropriation is without the consent of some person for whom he is a trustee or who is the owner of the thing, as the case may be, or that the appropriation will, if known to any such person, be without his consent. The learned author Twumasi as already mentioned supra states that to say that the accused appropriated the thing dishonestly amounts to saying that he had a guilty mind at the time he appropriated it. In short, it means that his state of mind was not consistent with innocence at the time of the alleged offence. Furthermore, intent to defraud has been defined under section 16 of Act 29 as any gain capable of being measured in money or the possibility of any gain to any person at the expense or to the loss of any other person by any unlawful act. Simply put, in a charge of stealing, there must be evidence that the accused, when appropriating the thing, had an intent to cause some economic loss to the owner thereof, whether certain or uncertain. The evidence led by the prosecution revealed that the offence of stealing involved two persons. These two persons are A1 and A2. Though there is no direct evidence of an agreement to act together, there is ample evidence which can be gleaned from the role the 1st and 2nd accused persons played, which ultimately enabled them to steal the amount stated which per the evidence belongs to BPSL. The evidence of PW1, PW2, PW3, PW4 and PW5, as narrated supra, established the role that A1 and A2 played. The evidence of PW4 especially established that because each staff of BPSL had a unique code, the audit trail revealed the persons who had gone into the system using the back end to conduct unlawful transactions on the system. PW4's testimony revealed that A1 and A2 accessed the four accounts multiple times, some at night, 10:00 pm and 11 pm, and some very early in the morning, at 5:00 am. Shortly after transferring monies into the accounts, the customers withdrew them from their accounts, some close to

6 minutes of each other. According to him, through the audit trail balances, he noticed that most of the transactions were carried out by A1. A2 also authorised some cash withdrawals that led to A4 withdrawing funds. Specifically, he testified that as one of its policies, cash withdrawals of more than 10,000.00 Ghana Cedis must be authorised by a branch manager, but on 8th December 2014, A4 James Afadzie managed to withdraw an amount of GHC17,000.00 without the manager authorising same. 21 According to PW4, A4 withdrew the amount because A2 had authorised it from the back end, a role he was not mandated to play as an IT officer. A2 also accessed the history of the two accounts that had been altered almost simultaneously, which meant A2 was aware of what was happening. He stated that he was able to establish that towards the changeover to the new system, there was a deliberate attempt to conceal and tamper with the said accounts, and he found out the said concealment through a database instruction on A1's laptop. The evidence led against A1 and A2 by the prosecution overwhelmingly implicates A1 and A2. In my opinion, the witnesses were not discredited under cross-examination but their evidence rather confirmed and reemphasised the participation of A1 and A2 in making alterations to the system and also transferring the funds that A1 had deposited into the four accounts which gave the opportunity to A3, A4 and their two accomplices to withdraw the amounts in question. There is evidence on the record by PW4, especially as to how A1 and A2 visited the system through the back end on several occasions. Though counsel for the accused persons cross-examined him and sought to discredit his work, he was resolute under cross-examination and maintained that the unique user ID of A1 and A2 linked them to the alterations on the system and transfer of monies. In a nutshell, the said Exhibit B, which contained the results of the expert's forensic audit, contains the history of every action that altered, deleted or inserted anything in the database. It also revealed some of the IP addresses used by both Silas Adjei, revealed as SILADJ008, and Kwadwo Kudekor, revealed as KUDEKOR 144, using their computers to log in to the system. At page 9 of Exhibit B the expert (PW4) revealed that there was false accounting through fictitious manipulation and crediting of customer savings accounts through unauthorised database-level alterations/ manipulations and deletion of transactions that facilitated the withdrawal of such monies through ATMs and over-the-counter withdrawals. According to him, this false accounting resulted from manipulations by 22 A1 and A2. He revealed that through the collective actions of A1 and A2, the bank lost a total amount of 1,265145.35 Ghana cedis which comprised 800500 from over-the-counter withdrawals and GHC464645.35 from ATMs. The said exhibit on pages 11 to 5 shows the date A4 opened his account with BPSL and the amount deposited. A4 opened his account on 19th September 2014 at the Mile 7 Branch of the bank with only GHC500, after which a total of 14 cedis was charged automatically for ATM and cheque book thus leaving an amount of GHC486.00 At about 3 hours later, it also shows the user SILADJ008 viewing A4's account on several occasions between a short space of time. It ought to be noted that though the amount mentioned in the charge sheet and testified to by the witnesses is different from the amount mentioned in the report, in my opinion, that difference is not material once the amount mentioned in the charge sheet falls within the amount revealed by the report. PW4 further testified that on 8th October 2014, an IP address 192.168.1.62

assigned to A1 accessed the database and gave a command not front the front but through the back end. According to him, this was revealed by the audit trail, which meant that the bank did not issue the command. At pages 35 to 37 of Exhibit B, he highlights the activities of A1 from the backend at night from 8:35 pm to 9:26 pm. Thus for almost one hour, A1 inserted three kinds of information into the account of A4. A1 impersonated teller THEODUI0 on 9th April 2014 and deposited an amount of GHC4000.00, thus rendering it fictitious because even then, A4 had not opened the said account. PW4 pointed out how A1 credited funds into A4's account, and at a point when he viewed the said account, the amount was 486, after which he accessed it, and the amount reflected in the account was Ghc13486 because on 20th May 2015, A1 impersonated another teller ROSADUUO13 and an amount of 5000 was credited into that account. Likewise, on 11th June 2014, he impersonated the teller THEODUI10, whereby he credited the account with an amount of GHC4000.00. 23 All these transactions, he noted, were credited as if A4 had deposited the amounts himself. Thereafter, the balance changed from 486 to 13486. James Afedzie A4 then walked into the bank at about 2:30 pm on 9th October 2014 and withdrew an amount of GHC9000.00 over the counter, knowing very well that he had not deposited any amount in his account over the counter. Throughout the report, the same modus was used for A3's account and the other two accounts, after which they also went to withdraw the monies either by using an ATM or over the counter. These fictitious transactions using the same modus can be found on pages 9 to 23 of Exhibit B, and the detailed fictitious transactions also reflect from page 24 onwards, together with all the withdrawals made by A3 and A4. Precious Havor's account and Seth Asante's account. In respect of A3's account, he testified that on 17th June 2014 at about 8 past 10 pm, A1 accessed the account, issued an illegal database command and illegally credited the account with an amount of GHC6000.00 but which reflected that it had been deposited on 21st January 2014 even though the account was opened on 13th June 2014. However, she opened the account with only GHC100.00. As stated earlier, the modus operandi for all the other accounts he narrated was the same. PW4 further explained to the court using a PowerPoint presentation how such illegal transactions using the same modus were carried out by A1 from the period in contention e from 20th January to 18th March 2016, just before he resigned. Another aspect of the evidence that connects A1 and A2 to the offence can be found at pages 80 to 158 of the Forensic Audit report Exhibit B, already mentioned supra. A1, on 3rd July 2014, changed the photograph and signature of Seth Asante to Previous Havor, which is not allowed in a banking environment unless approved by the bank manager. He revealed that shortly after the change, A2 went ahead to view the photograph and signature change which he had not done before the change. Thus, A2 knew that A1 had been tampering with the system through the backend as an IT officer. Additionally, A1, at page 159 of the same Exhibit, altered the account of Dennis 24 Amankwa at about 10:30 pm again through the backend, which was not allowed in the banking environment. Under cross-examination, he was emphatic about the complicity of A1 and A2 in the alterations and all the illegal transactions that had taken place by the users SILAJ008 and Kudekor 144 being the users who tampered with the system. It was never suggested to the witness that those user names did not belong to A1 and A2 but

rather to system anomalies. Though counsel sought to suggest to him that what had happened could be attributed to the anomalies BPSL had with the Bankers Realm software and for which they wrote to them and had to change the software, it is the opinion of the court that his evidence was not discredited in any way. He answered a question from counsel for A1, A3 and A4 thus; Q: In the case of remote access how does an IT officer of BPSL get access into the server? A: As explained earlier ICT officers sitting behind their desks use a tool which is known as RDC and this is Remote Desktop Comment and when they access a server in this way the IP Address where they are seated is captured as the origin of access. Q: I am suggesting to you that even for a remote user who intends to access the back end where a Bankers Realm Application has to still access through the static address 192.168.1.3 and none other A: That can never be true since the RDC is a windows based functionality which is standard in the whole world and not only specific to the bank and it is to anybody who has a windows environment, and this means if a user access a server in this way the origin of his or her IP address is captured. If when access is the server 192.168.1.10, and you connect to a database server, the IP log-in is 192.168.1.10. Q: So, it is your case that the IP address for hosting the Bankers' Realm application software changes on the location where one accesses the server? 25 A: No my Lord it is not based on location but based on static or dynamic IP address. When he was cross-examined about the terms of reference, he revealed that though BPSL wrote to him, he did not have the letter. Counsel for A1, A3 and A4 also sought to suggest to him that he had already been prejudiced by the information BPSL gave to him, but he denied same and answered thus; Q: I am putting it to you that this your purported audit, as contained in Exhibit B is informed by and founded on misconceived information complainant passed on to you before your audit? A: That is not true. Q: I am putting it to you that you were prejudiced by the information complainant had passed on to you before your audit the result of which is Exhibit B A: That is not true since by using a number of techniques example database log, audit log, application log and audit of all available backups in a total of over 80,000.00 accounts only four were identified and this is through automated tools. In respect of A2, PW4 answered questions; thus, from counsel for A2, Pw4 told the court that it is never possible for the Bankers Realm software to be manipulated from the front end, and though the vendor can modify it upon request, it must be supported by the support agreement. He answered questions further thus; Q: Can you confirm that every banking application is developed using peculiar algorithm with several constraints put in place by the developers of the application to secure it? A: That is true and this only applies to what I will call the front end where it is only the vendor who has the source codes Q: Bankers Realm uses the same processes not so? 26 A: Yes my lord and this applies only to a front end. However, the second part, which is a database can also be accessed by the bank ICT staff, and it is not controlled by the vendor of the software Q: You will agree with me that these high level encryptions and the Bankers Realm database tables and particularly triggers that will never allow any third party to make direct postings on the tables? A: That is not true my lord and is a database officer has the powers to enable or stop the consequence and can have a direct injection in the database. At page 277 of the record one significant question was answered by PW4 shows thus; Q: You would agree with me that

the user account KUDEKOR and SILADJ008 were not the ones used to create these transactions. A: That is not true. Since I stated there is a link between a user account in an IP address and on this occasion the IP address is 192.168.1.62 was linked to Siladj008 The cross-examination of PW4, on the whole, revealed that A1 and A2 accessed the system from both the front end and the back end revealed by the audit trail. In the opinion of the court, the report is not fictitious as counsel for A1, A3 and A4 submitted in his address before the court, because the forensic report confirms the evidence of PW1 PW2 and PW4 concerning the actions of these two accused persons on the system. There is, therefore, overwhelming and ample evidence led by the prosecution to substantiate the offence of Conspiracy against the 1st and 2nd accused persons as it was their collective unlawful action that enabled A3 and A4 to have money in their accounts which they accessed for the benefit of all the accused persons likewise A1's friends. The common purpose of both accused persons was revealed by PW4, whereby the accused went onto the system through the back end within minutes of each other and at odd times as late as 10 pm and 11 pm. That evidence established the clandestine or unlawful activities of A1 and A2 geared towards crediting money in the four 27 accounts revealed by exhibit B, thus making it possible for A3 and A4 to withdraw the monies over the counter and by the use of ATM cards. It should be noted that in his investigation caution statement, which was tendered and marked as Exhibit C dated 26th July 2016, the 2nd accused person made statements that, taken together with other evidence on the record, implicated him in the crime in other words it is a confession statement. That statement which is a confession by A2 was not witnessed by an independent witness as required by section 120 of the Evidence Act, 175 NRCD 323, and since it forms part of the prosecution's case, it ought to have conformed to the tenets of the law. I agree with the counsel for the accused persons that it was taken in flagrant disregard for the procedural laws of this country. Therefore, this court cannot rely on same to draw any conclusions though it was tendered without objection. It is inadmissible per se, and a court must only arrive at its decision with legally binding evidence. I shall therefore exclude same. By way of comment, I must state that police officers or investigators who misconduct themselves in this regard must be sanctioned when they fail to adhere to the law in carrying out their duties. There must be a robust system of monitoring such unprofessional conduct in the service. Nevertheless, even though this court has decided not to rely on it, there is ample evidence from the report Exhibit B and the explanation of PW4 that A2, in particular, was always viewing the accounts after A1 had made alterations and credited the various accounts. Indeed he revealed that A2 viewed the accounts more than 200 times, which showed that he knew what was going on apart from his own partial participation in some of the transactions, which enabled monies to be withdrawn by A4. Furthermore, applying the principle laid down in respect of the offence of stealing to the evidence on the record, the evidence led through PW1, PW2, PW3, PW4, and PW5 established without any cavil that the money involved, i.e. over GHC1,262,496.66 does not belong to the accused persons but to their former employer Best Point Savings and Loans Ltd. On the second ingredient, there is ample evidence on record to show that an amount of 1,262,496 .66 has been appropriated, moved and taken away from the bank through the illegal acts of A1 and A2. Firstly, PW1

testified about how they realised that there was a forced balance, and the anomalies led to consulting PW4 which revealed that the monies had been moved into four accounts through the backend of the banking software. It is worthy of note that PW1's evidence that the investigations revealed A1 initially as the culprit, and when they went to arrest him, he said he had the money and would pay it back. That evidence implicates A1 was never challenged when PW1 was cross-examined. That particular evidence was corroborated by PW2 and PW5, who were also part of the team that went in search of A1 to have him arrested. PW5 also testified that A3 and A4 told the police that they had withdrawn the monies for A1 though they claimed they did not know how he came by them. There is also evidence on the record which was not discredited in any way that A1 led the police to the bank where he had invested the money and had it not been the fact that some police officers assisted him in withdrawing the money without the knowledge of the substantive investigator, the said amount would have been retrieved officially by the police. I agree with counsel for the Republic that the mere fact that the money was not found with the two accused persons does not negate the fact that they stole the money from the bank's back end. The evidence on record led by all five prosecution witnesses, as narrated supra, show that the money was moved without the consent of the bank and A1 and A2 knew that if the bank got to know about it would not have consented to the acts of A1 and A2. Indeed the evidence reveals that the clandestine activities of A1 and A2 were intended to cause economic loss to the bank. By subsequently depositing the money into the four accounts, which was later withdrawn and shared, they did so with an intent to defraud the bank, and that was why they covered their tracks by 29 deleting data which eventually had to be revealed through a forensic audit of the system as it could not be seen with the naked eye and since it was done through the backend of the system. As explained in the case of *Anang vs the Republic* 1984-86 GLR 458 cited by Counsel for the Republic that dishonesty in the ingredient of stealing connotes a moral obloquy, and the act must be such that it must cast a slur on the character of the accused revealing him as a person lacking in moral integrity or a plainly dishonest person. Given this analysis, I am of the opinion that the prosecution led sufficient credit-worthy evidence through PW1, PW2, PW3, PW4 and PW5 to support the ingredients of the offence of Conspiracy to commit the crime of stealing and stealing against both accused persons. Having discussed the 1st two counts, I shall proceed to discuss the 3rd count and the particulars read as follows; SILAS Adjei, IT officer between January 2014 and March 2016 in Accra in the Greater Accra Region, intentionally and without authority altered and erased electronic record on the database of Best Point Savings and Loans Limited, thereby causing it to be modified. The law on this offence can be found at section 125 of the Electronic Transactions Act 2008 Act 2008 Act 772, which reads as follows; "A person who intentionally and without authority interferes with an electronic record in any way which causes the electronic record to be modified destroyed or otherwise rendered ineffective, commits an offence and is liable on summary conviction to a fine not more than two thousand five hundred penalty units or to a term of imprisonment of not more than five years or to both" Thus the prosecution must establish the following ingredients

- That an electronic record exists 30
- That the said record has been interfered or tampered with by the accused
- That by the said interference, the record was either modified, destroyed or rendered ineffective.
- That the interference was intentional and done without authority. PW3 and PW4 led evidence which shows that the Bankers Realm software had some records in it, which was in the custody of A1 as he was the one in charge of the backups for the migration unto the X100 software. Though his counsel cross-examined the witnesses on that evidence vigorously, they stuck to their evidence unwavering that A1 and A2, the IT staff, had tampered with the record through the backend of the system, thereby causing anomalies on the record of the bank and causing imbalances on the system. PW4 narrated how at odd times and long after the close of work A1 and A2 went onto the system several times, after which A1, even on some occasions, impersonated some of the tellers and moved money into the four accounts, after which the monies were withdrawn by A4 and A3 when A1 knew that he was altering the data and giving a false balance in the system. Though A1 was an IT officer and was authorised to perform end-of-day on the system and had access to the backend by reason of that position, there is overwhelming that he did not have the authority to alter or modify any data on the Banker's Realm system evidence that he did so intentionally and without the knowledge of PW1 who was his immediate boss or PW2 who was the internal auditor. Indeed there is indisputable evidence led by PW4 and supported by Exhibit B as to the clandestine activities of A1. There is evidence that he had even altered information relating to the photographs, signatures and names for two of his accomplices who have not been arrested for impersonating the original account holders as if they were running the accounts themselves. Because A1 knew that his acts were not authorised, he had to do the alteration and modification through the back end of the software. PW4's evidence also revealed that A1 sought to delete his clandestine activities on the system; thus, an expert had to be employed to decipher the anomalies hidden in the system to be able 31 to find the source of the imbalances that PW3 testified that he found when he had to use the last backup for the migration onto the X100 software. As already stated, the evidence of PW1, PW2 and Pw3 was corroborated by PW4's findings on the record. There is, therefore, sufficient indisputable evidence on the record to link A1 to the interference in the system. The first accused person was also charged with the offence of Money Laundering under the Anti-Money Laundering Act 2008 (Act 749), which reflects in count 4, and the particulars read as follows; Silas Adjei, IT officer between January 2014 and March 2016 in Accra in the Greater Accra Region, disguised the unlawful origin of money belonging to Best Point Savings and Loans Limited by investing it and purchasing assets with it knowing that the money was stolen. Counsel for the Republic submitted that though Act 749 has been repealed, the court can still go ahead to determine the said offence under the old law as the interpretation Act has saved the offence. She also cited the unreported case of Edmund Addo v The Republic Criminal Appeal No. H2/2021, where the appellate court held that though section 136 of the Electronic

Transactions Act had been repealed, section 341d of Act 792 saves the offence, and that is the law under which the appellant was to continue to be tried and not the new Act since that would amount to giving the new law a retrospective effect. Thus though the Anti-Money Laundering Act, 2008 (Act 749) had been repealed by the Anti-Money Laundering Act, 2020 (Act 1044), the offence shall be discussed in the light of the old law. Money laundering states as follows;

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. It ought to be noted that Section 51 of Act 749 defines serious offence as follows; "Serious offence means an offence for which the maximum penalty is death or imprisonment for a period of not less than twelve months." Thus, in the court's opinion, the offence of stealing with a maximum sentence of 25 years falls within that category. See the cases of the Republic vs Mandy Afari Gyan, Unreported FTRM88/14 dated 21st December 2015 and The Republic vs Eugene Baffoe Bonnie Suit No CR/904/2017 dated 12th May 2020 reported at 2020 JELR 80375 (HC) on what constitutes the offence of Serious Offence and Money Laundering. Having led evidence to substantiate their allegation that through the nefarious activities of A1 on the Bankers Realm software, he was able to transfer an amount of GHC1,262,496.66 to four different accounts, two of which belonged to A3 and A4 and which they successfully withdrew over the counter and by the use of ATMs, it is established that the offence of stealing has been established. The evidence of PW1, PW2 and PW5 established that A1 said he had used the money to purchase his house and had also invested some and purchased other properties, including the 11 vehicles retrieved from him. It is worthy of note that PW5 testified extensively on the vehicles that A1 himself led them to retrieve, which was never contested under cross-examination. The only suggestion to her was that the list of 33 the vehicles she prepared was self-serving as it was not on the letterhead of the police. However, it is pertinent to note that PW1 and PW2 corroborated the retrieval of the vehicles in question. PW2 led evidence to show that A1 himself led the police to Dome, where A1 showed them the bus he had used the stolen money to purchase. Thus by using the proceeds to purchase the said vehicles, A1 had converted the proceeds of crime, thereby concealing the unlawful origin of the stolen proceeds of crime. Additionally, PW1 also told the court that A3 had confirmed to the police upon her arrest that she knew his brother had bought vehicles and bought a house within a

short time. There is evidence produced by the prosecution to show that A1 had given a vehicle to A2 to use, which vehicle A2 said he had repaired. Though A1 claimed it was a vehicle A2 intended to buy with a loan from Best Point, A2 gave him up when he told the court that A1 only gave him the vehicle to use. Based on the incontrovertible evidence led by the prosecution, this court holds that there is sufficient evidence on the record to support this charge against A1. Count 5 relates to A3 and A4, and the particulars read as follows; James Afadzie, Trader and Patience Adjei, mobile money merchant, between January 2014 and March 2016 in Accra in the Greater Accra Region, abetted Silas Adjei to steal the sum of GHC1,262,496.66 Best Point Savings and Loans Limited. The offence of abetment can be found under section 20(1) of the Criminal and other Offences Act, 1960 Act 29 states; A person who, directly or indirectly, instigates, commands, counsels, procures, solicits, or in any other manner purposely aids, facilitates, 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 34 uncertain, commits the criminal offence of abetting that criminal offence, and of abetting the other person in respect of that criminal offence.

- (2) A person who abets a criminal offence shall, if the criminal offence is actually committed in pursuance of, or during the continuance of the abetment, be deemed to have committed that criminal offence. In the case of *Commissioner of Police v Sarpey and Nyamekye* [1961] 1 GLR 756 at 758, the appellant was convicted for aiding the accused to steal. Sarpey only came into the picture when he, as a policeman, was manning a barrier where the accused passed with the goods but failed to inspect the car. On appeal to the Supreme Court, it was held that, "In order to convict a person of aiding and abetting it is incumbent on the prosecution to prove that the accused did any one of the acts mentioned in subsection (1) of section
20. Under subsection (2) a person who abets a crime shall be guilty if the crime is actually committed (a) in pursuance of abetment, that is to say, before the commission and in the presence or absence of the abettor and (b) during the continuance of the abetment, that is to say, the abetment must be contemporaneous in place, time and circumstance with the commission of the offence. In our view, an act constituting an abetment in law must precede, or it must be done at the very time when the offence is committed." At page 84 of his book *Contemporary Criminal Law in Ghana*, the learned author Justice Dominic Adjei states as follows; "The offence of abetment requires proof of mens rea of the accused person. The position of the law has been that the offence of abetment of crime requires proof of mens rea. It means the intention to aid as well as knowledge of circumstances and proof of the intent of the accused person involves proof of a positive act of assistance voluntarily done." 35 See also the cases of *National Coal Board vs Gamble* [1959] 1 QB 11 Effah and Another v The Republic [1999-2000] 2GLR 722 In the case of *Boateng v. The State*, dated 20th November 1964, the Supreme Court held that intent is a thing which exists in a person's mind. The proof of it may be given either by direct evidence of what the person himself says as to his purpose for doing a thing or by inference from the nature and manner

of the act he did and sections 11(1)

- (2) and (3) of Act 29 provide the guide for ascertaining a person's intention or purpose for doing an As stated supra, intent can only be inferred from the basic facts which have been proved in the case. This being the case, and since the prosecution bears the burden of proof, what evidence did the prosecution produce against A3 and A4 in respect of this charge? PW1, PW2, PW4 and PW5 led evidence against A3 and A4 with regards to how the 3rd and 4th accused persons opened an account; A3 with 100 cedis and A4 with 500 cedis and knowing very well that they had not deposited any money in the account, withdrew monies that had been transferred into the account by A1 and A2. As already stated by PW4 and supported by Exhibit B, the evidence shows that the moment money was deposited in their accounts, they either went over the counter or used ATM cards to withdraw the monies from the account. PW5 testified that upon the arrest of A3, she told the police that she withdrew the monies and gave them to her brother A1, but she did not know that he was stealing the monies. The evidence led showed that at no point in time did A3 and A4 deposit any money in the account they opened. Thus it must be inferred from that fact that the accounts they opened were for assisting A1 to deposit monies in same which they later withdrew for him. If the account had been opened with the intent to run same by themselves, they would have shown to the court that they deposited money in same after the initial opening balance. Therefore, this court finds that A3 and A4 knew about the plan of A1, which was why they agreed to open the said accounts to aid A1 in depositing the stolen funds in same. As noted by counsel for the prosecution, counsel for these accused persons prayed the court for an order to produce the account opening forms of the two accused persons, and when the electronic copy was produced, counsel decided not to use same or rely on it again. In fact, I must say that it behoved the prosecution to establish that they opened an account in the bank, but the fact of not being customers and not opening accounts with the bank flies in the face of reason when it is clear that upon the arrest of A1, he led the police to arrest A3 and A4 as the persons who had assisted him to carry out his acts by depositing monies in their accounts. There is ample evidence on the record that A3 and A4's accounts were identified as two of the accounts into which A1 credited monies. The report of PW4, Exhibit B confirmed this fact. This court finds that A3 and A4 had assisted, aided and facilitated A1 and A2 in completing the crime of stealing. This court further agrees with counsel for the Republic that the willingness of A3 and A4 to open accounts with the bank into which A1 deposited vast sums of money shows that they knew of the whole scheme, i.e. that A1 was depositing the monies he illegally got into their account and going ahead to share same with them. There is ample evidence on the record that immediately the illegal funds are deposited in their accounts, they withdraw same for A1. Thus their actions are contemporaneous with the act of stealing by A1 and A2, and guilty knowledge must be imputed to them. Therefore, I find that they aided A1 and A2 in stealing the amount of money in question. It is the opinion of the court that the evidence against A3 and A4 was not discredited in any way. 37 The last and final count relates to A3 and A4, and the particulars read as follows; James Afadzie, trader and Patience Adjei mobile money merchant between

January 2014 and March 2016 in Accra in the Greater Accra Region, dishonestly received money from Silas Adjei, which you ought to have known was stolen.

146. Dishonestly receiving property A person who dishonestly receives property which that person knows has been obtained or appropriated by a criminal offence punishable under this Chapter, commits a criminal offence and is liable to the same punishment as if that person had committed that criminal offence.
147. Dishonestly receiving
 - (1) A person commits the criminal offence of dishonestly receiving property which that person knows to have been obtained or appropriated by a criminal offence if that person receives, buys, or assists in the disposal of the property otherwise than with a purpose to restore it to the owner. Thus in this case once there is evidence that A3 and A4 received various sums of money into their accounts and went ahead to share same with A1 knowing very well it was stolen money, they must therefore be held to have dishonestly received the said amount. The basic facts established by the prosecution through its witnesses show that A3 and A4 opened the account, and apart from the initial deposits of 100 and 500 Ghana cedis, they had not deposited any money into the account by themselves. The only amounts reflected in their various accounts were the amounts that were deposited by A1, which they withdrew for him. The fact that they even agreed to have A1 deposit such considerable amounts in their accounts, which they withdrew for him, shows that they knew that the funds they were receiving were illegally obtained. Otherwise, they would have asked A1 the source of the money, and the expectation would be to have queried why A1 was not depositing such huge sums in his account 38 but theirs, only to turn around to ask them to withdraw same for him. They, therefore, knew that the monies they received into their account were illegal funds, which they withdrew for A1 and shared with him. Indeed this court must infer guilty knowledge from the surrounding circumstances established from the evidence led by the prosecution. This court must therefore hold that A3 and A4 knew that the money had been stolen, yet they received same into their accounts, withdrew same for A1 and out of which A1 gave them some portions. Having analysed the evidence led by the prosecution, which in the opinion of the court, was not discredited in any material way, I shall proceed to consider the defence of the accused persons, after which this court would decide whether on the totality of the evidence led the prosecution has proved its case beyond reasonable doubt in order for the accused persons to be convicted as charged. This court must consider the accused person's defence using the three-tier test established in various cases. In the case of the Republic v Francis IKE UYANWUNE, 2013 58 GMJ 162 CA, it was held per Dennis Adjei JA 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 nonproduction 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, the accused should be acquitted, but if it is not, and the court is satisfied that in considering the entire evidence on the record the accused is guilty of the offence, the court must convict him. This test is usually referred to as the three-tier test. 39 The gravamen of the defence put up by A1 is hinged on his testimony that he could not have made any system changes on the Bankers Realm, and he also refuted the testimony of the prosecution witnesses that he was in charge of the backups. According to A1, measures were put in place that could not have allowed him to make alterations or credit accounts of customers on the system and through the backend, as alleged by the prosecution witnesses. He testified that he did not conspire with A2 to steal any monies from Best point. His counsel also submitted that he had. He actually referred to the report of, i.e. Exhibit B as being misconceived. However, under cross-examination, it is revealing to know that he did not deny being the user of Siladj008 as testified to by PW4. In fact, as noted by counsel for the Republic, the accused, under cross-examination, confirmed that every staff had his or her unique username and code. A1 also confirmed that because of the unique code and username, any activity on the system would register the user that carried out the actions. Under cross-examination at page 357, A1 answered questions thus; Q: The back end also keeps records of every activity performed by any person at the back end. A: Yes my Lord Q: Therefore, whatever you have done on the system until you resigned can be traced A: Yes my Lord. He goes on to answer questions thus at page 360 of the record Q: You remember you said that the banker's realm system is a secured system that records every activity that takes place on it? A: Yes my Lord 40 Q: That would include any changes that take place on the system A: Yes my Lord Q: So it is possible that an account name could be changed A: Yes my Lord. That's only at the front end. That is when the account holder has formally written to the branch manager and provided the necessary documents to effect such changes. Q; As you said you were also a user at the front end? A: Yes my Lord. Q; It is true that the Bankers Realm software had over 80,000 accounts? A: Yes my Lord when I was in Best Point's employment. Q: As an IT officer were you interested in all the 80000 accounts? A: No my Lord My interest is only in those accounts that have been reported to me by the other users of the system for having anomalies on them and also I will also be interested in those accounts that other users of the system have engaged me to generate for them on their use. The discourse above between A2 and counsel for the prosecution corroborates the evidence of PW4 that all activities which took place at the backend of the system were recorded, and it revealed that A1 was responsible for all the alterations and falsifications on the system because the system revealed his unique ID which he did not deny to be SILADJ008. Likewise A2. A1's evidence that no user at the front end can ever access the backend database to perform any activity is clearly false in the court's opinion. A1, in his testimony before the court, tells the court that though the constraints and triggers on the Bankers Realm database would not permit any such 41 direct postings as he has been accused of yet he turns around to tell the court that any data going into the Banker's Realm Database must first be entered into the Tx transaction Table and not the 'T'

account table as Mr Kasera wanted the court to believe. This evidence is contradictory because he claimed there were constraints and triggers on the Bankers Realm database that would not allow any entry, yet he claimed that the transaction table must receive data before the accounts table. He also wanted the court to believe that the names of customers could only be changed from the frontend. That clearly cannot be true in the light of the fact that anything done on the system through the backend is recorded hence the audit trail that recorded all his activities on the system. The testimony by A1 clearly reveals him as an untruthful witness who has endeavoured to mislead this court hence the material contradictions in his testimony. Additionally, his attempt to discredit Exhibit B, which is the forensic report implicating him for his activities at the backend and sometimes the front end as late as 11 pm in the night, cannot be accepted by this court. It also discounts his testimony that the system had been configured such that no alterations could be made because he admitted that any change done through the backend would definitely be recorded. This court holds that all his exhibits, i.e. Exhibit 9 to 65 attached to his witness statements which were admitted in evidence amidst objections from the prosecution, cannot be accorded any weight as they are all self-serving documents. Another reason why the court will also not attach any weight to those exhibits is because A1 told the court that the said document was given to him by one Afriyie, who worked at the reconciliation department of BPSL but failed to show any proof that the said person in truth worked with Best Point. I think that was a material fact that ought to have been proved. I also hold the opinion that he was a material witness to A1's case in that regard. He also failed to show how that person generated the document. Basically, 42 that means that the source of the said document is only known to the said Afriyie, whom he claimed gave him the documents and A1 himself. It is also worthy of note that when PW4 was in the box, it was never suggested to him that the said documents existed to contradict his testimony. It is the opinion of the court that if the said document truly existed, A1 would have produced same in court when PW1, PW2, PW3 and PW4 testified. It is worthy of note that under the Electronic Transactions Act, under which A1 was charged for interfering with the data of the bank, section 7 states as follows; Admissibility and evidential weight of electronic records

- (1) The admissibility of an electronic record shall not be denied as evidence in legal proceedings except as provided in this Act.
- (2) In assessing the evidential weight of an electronic record, the Court shall have regard to
 - (a) the reliability of the manner in which the electronic record was generated, displayed, stored or communicated,
 - (b) the reliability of the manner in which the integrity of the information was maintained,
 - (c) the manner in which its originator was identified, and
 - (d) any other facts that the Court may consider relevant. Thus all those documents being documents generated electronically are doubtful as A1 has not been able to establish that the said documents emanate from BPSL satisfactorily. He failed to tell the court how they

were generated and stored and how 43 the integrity of the so-called information in there was preserved before it was printed out for him. For these reasons, I shall not attach any weight to all those documents. Another defence that A1 sought to put up supported by his counsel's cross-examination of the prosecution witnesses is the assertion that since the yearly financial reports of Best Point for the period in question did not capture any losses then it cannot be true that Best point lost any money as depicted in Exhibit B and as testified to by all the prosecution witnesses. He testified that such fictitious transactions could not pass the end of the day, End of Month and End of year processes which they successfully ran throughout the period in question. I do not see any merit in that defence because PW4 made it clear that the anomalies could not be viewed with the naked eye, and per the evidence, it took a forensic expert to unravel the anomalies in the system. It is very convenient for anybody who has been arraigned for such offences to bring those reports and claim that if indeed the bank had lost such an amount of money, it should reflect in their financial reports even if there is overwhelming evidence that the movement and taking away of the money had taken place. In my opinion, even if those losses have not reflected in those reports, it cannot form the basis for exonerating a bank staff who has clearly been proved to have done unlawful transactions on the banking system. This court, per its analysis, has found that indeed A1 and A2 tampered or interfered with the system and, through that interference, succeeded in stealing the amount from BPSL. The evidence he adduced before the court carries no weight and cannot be relied on as the truth. A1 also told the court that looking at the manner in which best point carried out its migration exercise, whereby it moved all its anomalies and discrepancies of balances on the Bankers Realm system onto X100, it has no basis at all for holding any balance discrepancy against him. This assertion by A1 flies in the face of reason because, under cross-examination, he agreed and confirmed that there were about 80,000 accounts, as 44 testified to by PW3 and PW4, yet it is evident that the four accounts discovered were linked to A1 as per Exhibit B. It is clear that the four accounts belong to people connected to A1, and A1 himself was the one who led the police to arrest A3 and A4. That evidence was not discredited in any way to the extent that there is evidence that A3 and A4 admitted that they had actually opened the accounts at the instance of A1 and withdrew the monies at his request, which they all shared. I do not accept that it is just by coincidence that out of the 80000 accounts, at least two of the owners of the accounts discovered relate to A1 and no other bank staff. A1 sought to impugn Exhibit B, the forensic report, throughout his defence and per his lawyer's address. At page 362 of the record of proceeding, A1 referred to page 56, line 3 of Exhibit B and stated the activity there shows that the action by Aneopo 020 for James Afadzie reflects that the IP address column shows NULL, which indicates that the activity did not take place thus the testimony of Mr Kasera in respect of that cannot be true. Nevertheless, counsel for the Republic was cross-examined on that aspect of his evidence at page 362 of the record he answered thus; Q: Kindly take a look at your exhibit 23, page 187. Can you confirm the existence of NULL values from top to bottom on the right-hand side? A: Yes my Lord and that relates to the column which have the names close by, and what it means is that the accounts have not been closed so there is no way data could be entered for that column. Q: The existence of null on exhibit 23 does not

mean the account does not exist? A: No my Lord it does not mean the account does not exist but it means on those columns no activity to that effect have been made Q: It also does not mean that the transaction does not exist i.e. Exhibit 23 45 A: Yes my Lord that is so. This exhibit 23 is not an audit log in the database. Any audit log should have an IP address indicating which user of the system performed which activity. A1 sought to represent to the court that his exhibit 23 is not an audit log; thus, it could have "NULL", but since Exhibit B is an audit trail that transaction must have an IP address and once it reflected "NULL" it means the activity never took place. However, from the discourse, one could see that he admitted that "NULL" did not mean the account did not exist. This court finds that A1 had clearly contradicted himself because the audit trail showed the staff member who performed that action for James Afadzie. Thus, it cannot be accepted that the activity never took place. Besides when PW4 was in the box, he was not cross examined on that point. Counsel for A1, A3 and A4, in his address, sought to say that the evidence of the prosecution that A2 refuted the allegations could be seen in the cross-examination of A2 by A1. It is the opinion of the court that the answers given by A2 in respect of the questions A1 asked him are expected, as definitely he could not have answered otherwise. It is a convenient way of asking A2 such direct questions and for him to answer in the negative, which questions and answers, in the opinion of the court, do not carry any weight as A2 was bound to deny his involvement and also tend to exonerate A1 since they have been charged with conspiracy. This court cannot accept the argument that the prosecution should have tendered the Bankers Realm backup in the face of the audit trail and besides, A1 admitted that everything done on the Bankers Realm would definitely be recorded. This court finds all the explanations of A1 given in his defence to be untenable and unacceptable in the face of the overwhelming evidence adduced against him by the prosecution supported by Exhibit B, which I accept as credible. 46 Is his evidence reasonably probable? The explanations given by A1 are not reasonably probable because having informed the court that everything done on the system is trailed by the system, it cannot be true that the exhibits that he tendered in an attempt to controvert the evidence of the prosecution witnesses are genuine. It is not also reasonably probable that of all the anomalies in the system, the system only linked his sister's and boyfriend's accounts to him as the accounts in which he had deposited money which they withdrew and shared. It is also not reasonably probable that A3 and A4 did not open accounts with BP, yet when A1 was arrested, he led the police to A3 and A4 as two of the people who assisted him in committing the offence. This court finds from the evidence that it was A1 himself who led the police to retrieve the vehicles at Dome, but in his defence, he wanted the court to believe that it was because the police had intelligence, which was why they knew he had cars. This is clearly an afterthought because PW1, PW2 and PW5 told the court that at A1's house, he confessed to having used the money to purchase the house and to also purchase the vehicles and led the police to Dome, where some cars were retrieved. Therefore, I do not accept his explanation that it was based on police intelligence or because of the papers the police found in his house that the cars were retrieved. There is ample evidence on the record that A1 connived with two police officers who assisted him in withdrawing his investment with Ideal Finance. Thus it is clear from the evidence that not only did A1 use the monies stolen

from BP Savings and Loans to purchase a vehicle and a house, but he also invested some, which he later withdrew, out of which he gave GHC30,000.00 to the said police officers. In the opinion of the court, A1 has not been able to extricate himself from the quagmire in which he finds himself by raising a reasonable doubt in the case of the prosecution. I shall now discuss the defence of A2. 47 Throughout his testimony, A2 also told the court that part of his job was opening user accounts and viewing accounts to solve issues reported. Nevertheless, he failed to tell the court why he had to view the accounts of Patience Adjei, James Afadzie and the two accomplices several times, sometimes immediately after A1 made alterations to same and to also view same sometimes before money was withdrawn. There is also evidence that his username KUDEKOR 144 went into the system to approve an amount to enable the amount to be withdrawn by A4 above the amount authorised by the bank daily and without approval from the bank manager. A2 also disputed Exhibit B with his lawyer submitting that there are discrepancies and contradictions in the testimony of the prosecution witnesses thus, the court should dismiss the charges against all the accused persons. As already stated, the mere fact that A1 cross-examined A2 in the manner he did does not mean that this court accepts the answers given by A2 under cross-examination denying his involvement and A1's involvement as well. A2 failed to explain how his username was in the audit trail and revealed that he had approved for A4 to withdraw money above the allowed threshold at short intervals contemporaneously with A1 and the withdrawals by A3 and A4 yet denied his involvement in conspiring with A1 to steal from the company. This court cannot accept the explanation given by A2 because he also did not deny that his username at Best Point was KUDEKOR144 and failed to explain to the court why he was viewing A3 and A4's accounts on several occasions identified by the audit trail. He simply denied viewing the accounts with the defence that he only viewed accounts which had issues. He, however, failed to show that A3 and A4's accounts had issues for which he was viewing them in order to resolve them. It seems all A2 sought to suggest was that Exhibit B is a forgery, but clearly, from the explanation given by A1, the main brain behind this whole criminal activity, as an IT officer, it beats the imagination of the court as to how out of 80,000.00 A2 was 48 connected to accounts that A1 had viewed and from which A3 and A4 had withdrawn money though he claimed he only viewed accounts that had issues to be resolved. Regarding the vehicle he received from A1, in his Exhibit D, which was taken in the presence of an independent witness, A2 admitted that A1 gave him the car to use, but when A1 was questioned about it, he claimed A2 took a loan to purchase the vehicle from him. Thus A1 and A2 contradicted themselves. Thus the court cannot accept his explanation, given that it was not a gift from A1 in exchange for his involvement in the theft that took place on the Bankers Realm Software. It is the finding of this court that the attempt by A2 to extricate himself from his acts on the Bankers Realm Software cannot be accepted by the court as the truth because, as already stated, the audit trail linked him to all four accounts and he did not tell the court why he was viewing the said accounts. He could also not explain the evidence that the audit trail revealed his username as authorising an amount of GHC17000.00 for A4 to withdraw. It is also the court's opinion that his explanations are not reasonably probable because it cannot be by coincidence or by accident that the audit trail

had revealed his username and linked him to the four accounts in question out of the over 80,000 customer accounts. Therefore, I hold that his explanations in their entirety have not created any doubt in the court's mind, as his counsel suggested. The case of A3 and A4 A3 and A4 exercised their right to silence, which is guaranteed under the Constitution

1992. However, in the case of *Akwai Osei Adjei v The Republic* [2010-2012] 2GLR 2 GLR 754, also cited by counsel for the Republic, the Court of Appeal held as follows; If an accused person against whom a court has ruled that a prima facie case has been established against him on a particular charge or offence, refuses to say anything to 49 raise reasonable doubts in the case put forward against him, the trial court has no option but to proceed to convict him accordingly on that particular charge. Having failed to offer any explanation as to how their names appeared as having accounts with the bank and also aiding A1 in his criminal enterprise, when they had claimed that they were not guilty of the offence, this court has no other option than to conclude that they have no defence and not raised any doubt in the case of the prosecution and therefore have no other option to hold that the evidence against them stands and has not been challenged in anyway. On the totality of the evidence led against the accused persons, I hold that they have not been able to raise any reasonable doubt in the case of the prosecution as required by law. It is trite that the law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man that it leaves only a remote possibility in his favour, then the case is made against him. It is the finding of the court that the prosecution has proved the case against the accused persons beyond reasonable doubt and therefore satisfied the burden imposed on them. Consequently, I find all four accused persons guilty as charged and convict them accordingly. MALIKE AWO WOANYAH DEY JUSTICE OF THE HIGH COURT SITTING AS ADDITIONAL CIRCUIT JUDGE ACCRA 50

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