

GHANA / JUDGMENT

EUNICE ADU VS THE REPUBLIC (H2/17/21) [2023] GHACA 221 (13 January 2023)

[2023] GHACA 221

COURT

Court of Appeal

CASE / FILE NUMBER

H2/17/21

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IN THE SUPERIOR COURT OF JUDICATURE
IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ACCRA – GHANA
CORAM: MARGARET WELBOURNE JA PRESIDING
P. BRIGHT MENSAH JA
BARTELS-KODWO JA
SUIT NO. H2/17/2021
19TH JANUARY 2023
EUNICE ADU

...

APPELLANT

vs

THE REPUBLIC

...

RESPONDENT

BRIGHT MENSAH JA:

JUDGMENT

Sometime in 2018, Eunice Adu, the accused/appellant herein, was arraigned together with a Patrick Kodua before the Madina District Court charged with various criminal offences. Whereas Eunice Adu was charged with one (1) count of Stealing contrary to S. 124(1) of the Criminal Offences Act, 1960 [Act 29] and four (4) counts of Forgery of other document contrary to S. 159 of the Criminal Offences Act, 1960 [Act 29], Patrick Kodua, on the other hand, was charged with one (1) count of Abetment of crime to wit: Forgery of official document contrary to Sections 20(1) and 153 of the Criminal Offences Act, 1960 [Act 29], respectively. Both pleaded not guilty to the

charges whereupon the court mounted a full scale trial into the charges. At the close of the Prosecution's case, the trial Madina District Court ruled that based on evidence on record, a case has been made against both accused persons. In the result, the court ordered them to enter into their defence, thus overruling the submissions of no case canvassed by the lawyers for the accused persons. Apparently dissatisfied with, and aggrieved by the ruling of the trial court, the accused persons exercising their constitutional right to appeal against the decision, filed an appeal to the High Court, Accra. The High Court in its judgment handed down on 28/04/2021 which judgment appears on pp 78 – 105 of the record of appeal [roa] dismissed the appeal, thus affirming the ruling of the trial District Court calling on the accused persons to open their defence. Pursuant to the High Court's judgment affirming the decision of the trial District Court, the 2nd accused person, Patrick Kodua in compliance with the order of the High Court went back to the trial District Court to open his defence. A2 in his defence, filed a witness statement that appears on pp 2 – 30 of Vol. 2 [roa]. His evidence-in-chief and cross- examination of A2 by the Prosecution however appears on pp 97-121; pp 122-136; and pp 153-162 of Vol.2 [roa] respectively. In the final analysis, the trial District Court found A2 guilty and convicted him of the offence of Abetment of crime to: Forgery of official document contrary to Sections 20(1) and 153 of the Criminal Offences Act, 1960 [Act 29]. On record, A2 was sentenced to a fine of five hundred penalty units amounting to Six Thousand Ghana Cedis (Ghc6000.) or in default, 24 months IHL. It is worth emphasizing that whilst A2 went back to open his defence in the trial court, A1 Eunice Edua [appellant herein] rather chose to battle both the ruling of the trial District Court and the judgment of the High Court, on appeal. It is against the judgment of the High Court that this instant appeal has been launched. Now, per four (4) grounds of appeal contained in a notice of appeal filed 18/05/2021, the appellant complains that:

1. The learned High Court Judge fell in error in relying on the evidence of the handwriting expert that is, PW2 to hold that the appellant forged the signature of PW1.
2. The learned High Court Judge erred in holding that the appellant stole the land title certificate of PW1 in spite of evidence on record that the same document was used by PW1 and the appellant to secure a loan facility for Travel Bureau Limited from Stanbic Bank Ltd between 2007 and 2016 when PW1 was a Director of Travel Bureau Ltd.
3. The learned High Court Judge erred in law that the trial was not a nullity in spite of the fact that at a stage of the trial the Prosecution withdrew the charges, the accused person discharged and their plea taken on fresh charges yet the trial proceeded on the old evidence instead of the trial court starting it de novo.
4. The decision of the learned High Court Judge in upholding the decision of the trial Magistrate for the appellant to open her defence is against the weight of evidence before her.
5. Further grounds may be filed upon receipt of the record of appeal. So far, no further grounds of appeal have been filed. Traditionally, an appeal is by way of hearing the case. The settled principle of law is that the appellate court is enjoined by law to scrutinize the evidence led on record and make its own assessment of the case as though it was the trial

court. Where the court below comes to the right conclusion based on the evidence and the law, the appellate court does not disturb its judgment. On the other hand, the judgment of the lower court attracts being upset on appeal where the judgment is unsupportable by the facts and or the evidence. See: *Nkrumah v Attaa* (1972) 2 GLR 13 C/A. See also: *Apaloo v R* (1975) 1 GLR 156. Now, the grounds upon which a criminal appeal may succeed are spelt out in S. 31(1)&(2) of the Courts Act, 1993 (Act 459) that enacts: “(1) Subject to subsection (2) of this section an appellate court on hearing any appeal before it in a criminal case shall allow the appeal if it considers that the verdict or conviction or acquittal ought to be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence or that the judgment in question ought to be set aside on the ground of a wrong decision of any question of law or fact or that on any ground there was a mis- carriage of justice and in any other case shall dismiss the appeal.

- (2) The court shall dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred or that the point raised in the appeal consists of a technicality or procedural error or a defect in the charge or indictment but that there is evidence to support the offence alleged in the statement of offence in the charge or indictment or any other offence of which the accused could have been convicted upon that charge or indictment.” Furthermore, an appeal shall be dismissed on ground only that there was an omission of the particulars of the offence in the charge sheet or indictment but evidence is led in support of the charge. Guided by the law stated supra, if this court after critically analyzing the evidence led on record finds that the conclusions the trial Magistrate reached and as affirmed by the High Court are supportable, it shall dismiss the appeal and direct the appellant herein to go back to the trial District Court to enter into her defence. Per contra, if the court took the position based on the facts and evidence led on record that no prima facie case has been established or that the Prosecution were unable to establish the ingredients of the charges levelled against the appellant or that the case has been so grossly discredited by reason of cross-examination of the witnesses for the Prosecution by defence Counsel this court shall, by powers conferred on it by rule 32 of the Court of Appeal [CI 19] and S. 173 of the Criminal and other Offences (Procedure) Act, 1960 (Act 30), uphold the appeal and acquit and discharge the appellant. Having stated the general position of the law as regards the propriety of a criminal appeal before an appellate court, we now proceed to discuss the law as to what a trial court is enjoined to do at the end of the case of the Prosecution with particular reference to the instant appeal before us. So, what is the ultimate mandate of a trial criminal court at the close of the case of Prosecution? The answer is aptly provided for in S.173 of Act 30 which enacts: “Where at the close of the evidence in support of the charge, it appears to the court that a case is not made out against the accused sufficiently to require the accused to make a defence, the court shall, as to that particular charge, acquit the accused.” Expatriating on the law, the Court of Appeal in the oft-quoted case, *The State v Ali Kassena* [1962] 1 GLR 144 established the rule that: “S.173 [of Act 30] is concerned with summary trials where the judge decides both questions of fact and law. It is for the judge in a summary trial to weigh the evidence and then decide whether from the facts, the guilt of the

accused can be inferred. Evidence is said to be sufficient when it is of probative value as to convince and which if un-contradicted, will justify a conviction.” The case of *COP v Akoto* (1964) GLR 231 also illustrates the following principle: “A person charged before a court has a duty to make it appear that no charge has sufficiently been made against him to require an answer from him. This is a time-honoured practice and a fundamental principle in criminal law which has not been taken away by S.173” The learned author and jurist, A. N. E. Amissah Esq., in his invaluable book, *Criminal Procedure In Ghana* (1981) has posited at p. 128 thus:- “When the Prosecution has completed calling the evidence it intends to in order to establish its case, it closes the case. At this stage, the judge may consider whether there is any case for submission to the jury. This he may do so upon a sub- mission by or on behalf of the accused that no case has been made by the prosecution against the accused to answer.....” It is our respectful opinion that where the Prosecution has closed its case in a summary trial, as it is in this instant case, the law requires the trial court to consider the evidence on record and to satisfy itself whether a prima facie case has been established or not. If the answer is in the positive, the court then invokes S.174 of Act 30 and calls upon the accused person to enter into his defence. On the contrary, if it came to the conclusion that no sufficient evidence has been led in proof of the essential elements of the counts/charges or that the evidence led by the Prosecution has been so discredited by reason of cross-examination by the defence or that the evidence was so unreliable that no reasonable tribunal of fact can act on it, it shall then order the acquittal and discharge of the accused in accordance with S.173 of Act 30. It was precisely for this legal reasoning that the Court of Appeal held in that infamous fake currency case, *Apaloo v The Republic* (1975) 1 GLR 156 as follows: “The circumstances in which a submission of no case might successfully be made were: a) where there had been no evidence to prove an essential element in the crime charged and b) where the evidence adduced by the prosecution had been so discredited as a result of cross-examination or was so manifestly unreliable that no reasonable tribunal could safely convict upon it.” In summary, therefore, the mandate of the court at the close of the case of the Prosecution is to consider whether having regard to the evidence led on record, it is imperative to invoke S173 of Act 30 and acquit and discharge on all the counts or to call upon the Accused person to enter into his defence in accordance with S.174 of Act 30. We proceed at this stage to discuss the merits of the instant appeal. However, before doing so it is appropriate to chronicle in some detail, the facts and events leading to the institution of the case that has eventually landed in this court on appeal. Facts of the case: The complainant, Martin Acheampong Danquah [PW1] is a businessman whilst the appellant is the Chief Executive Officer of Travel Bureau Ltd and the 2nd accused, Patrick Koduah is a banker working with the Stanbic Bank and was once the Relationship Manager of the bank. PW1 was once married to the appellant but the marriage that lasted for 18 years was dissolved in 2016. Sometime prior to the dissolution of the marriage, PW1 discovered that his land title certificate covering the house in which both lived at East Legon, Accra was missing. PW1 first asked the appellant if she had seen the document but she denied ever seeing it. After a long search for it, PW1 decided to get a replacement from the Lands. At that stage it was detected that the land title certificate registered as No. GA 12181 that was

missing had been used as a deed of mortgage allegedly by himself and the appellant's company, Travel Bureau Ltd for a loan facility from the Stanbic Bank. It is alleged that PW1 who had no knowledge about the loan transaction reported to the Police for investigations. During investigations the bank was served with a court order for disclosure of information to provide the Police with all documents that were used in the loan application process to assist with the investigations. Pursuant to the court order, the bank furnished the Police with copies of a consent letter, 2016 and 2017 facility letters, the land title certificate, a deed of mortgage, a memorandum, a statutory declaration, a board resolution letter and a financial statement for the year ended 31st December 2010. It is alleged that investigations revealed that the appellant had stolen and used the missing land title certificate as a collateral to secure a loan facility of \$150,000.00 and had forged PW1's signature and the consent letter as well as a statutory declaration. It is further alleged that PW1 vehemently denied signing the bank's approval documents that were used in the loan process. Based on the investigations, both the appellant and A2, Patrick Kodua were subsequently charged with the charges stated herein and put before the Madina District Court. Now, to the merits of the appeal. To begin with, we want to put it on record that it is a bad proposition of law to state as a ground of a criminal appeal, as in the instant appeal as outlined in the 4th ground of appeal that "the judgment is against the weight of evidence". The proper rule of procedure is to couch the ground of appeal in this manner: ".....the ruling/decision/verdict cannot be supported having regard to the evidence." See: Nyame v R [1971] 2 GLR 140 C/A. This legal proposition is re-enforced by S. 31 of the Courts Act, 1993 (Act 459). We start off by discussing the 3rd ground of appeal. That is to say that the learned High Court Judge erred in law when she held that the trial was not a nullity in spite of the fact that at a stage of the trial the Prosecution withdrew the charges, the accused persons discharged and their plea taken on fresh charges yet the trial proceeded on the old evidence instead of the trial court starting it de novo. Learned Counsel for the appellant doing a critique of the record referred this court to pp 136-137 [roa] Vol.1 to argue that after the trial court had previously taken the pleas of the accused persons it was wrong for the court to have gone ahead on 24/09/2019 to accept from the Prosecution the substitution of new charge sheet without trying the case de novo. Regardless of the so-called anomaly, the learned High Court Judge ruled that the continuation of the trial was not tantamount to a nullity. It is the case of Counsel that the records did not indicate that the accused persons were discharged when a new charge sheet was substituted. It is his submission, therefore, that the learned High Court Judge misdirected herself when she held that no new element was introduced in the amended charge sheet and that defence Counsel did not also ask for the recall of any witness for any cross-examination. Admittedly, on the law as per S. 176(1) of the Criminal Procedure Act, 1960 [Act 30], at any stage of a summary trial, as in this case, where it appears to the court that the charge is defective in substance or form, the court may make an order for the amendment of the charge or by the substitution of, or by addition of a new charge as it considers necessary to meet the circumstances of the case. Pursuant to the amendment or substitution, as the case may be, the court is enjoined by law to discharge the accused on the old charge sheet or charges and to retake the plea of the accused. See: COP v Tunday Lagos

[1962] 1 GLR 127. We have critically studied the record and we find that the plea of the accused were retaken when the substitution of the charge sheet was made. Although there is no record by the trial court to indicate that the accused persons were discharged on the old charge sheet, we are nevertheless of the informed opinion that once there is that evidence on record that their plea were retaken after the substitution and the evidence led subsequently on the substituted charge sheet was not remarkably different from the evidence under the old charge sheet, there could not be, and there was no miscarriage of justice. In our simple answer to Counsel's contention/concerns, we make reference to, and rely on the law as sufficiently provided for in sub-sections 2 & 3 of Section 31 of the Courts Act, 1993 [Act 459]. Sub-section 3 particularly runs as follows: "The appellate court shall dismiss an appeal based on technicalities; procedural errors such as failure to take a plea and proceeding to trial; or where a person is charged with defrauding by false pretences or forgery and the particulars of the offence in the charge or indictment omit to allege an intent to defraud or any other intent forming part of the offence but evidence is led of such intent, an appeal based only on the omission in the charge or indictment shall be dismissed." Having regard to the evidence on record and the reasons of this court stated *supra*, we hereby dismiss this 3rd ground of appeal as same is based not on substance but on mere technicalities or procedural errors. The chief question: That leads us to addressing the fundamental question raised in the appeal. That is to say, whether the essential elements of the charges levelled against Eunice Edu were established. Put differently, whether the Prosecution were able to make a *prima facie* case against the appellant for which reason the order of the trial court as affirmed by the High Court calling on the appellant to open her defence was a proper exercise of judicial discretion. Proceeding further we shall combine all the other grounds of appeal and base our discussions principally on ground 4 of appeal. That is to say, the decision of the learned High Court Judge in upholding the decision of the trial Magistrate for the appellant to open her defence is against the weight of evidence before her. The other grounds of appeal are subsumed under this penultimate ground of appeal [4th ground of appeal]. It is worth repeating that the appellant herein is facing one (1) count of Stealing contrary to S. 124(1) of the Criminal Offences Act, 1960 [Act 29] and four (4) counts of Forgery of other document contrary to S. 159 of the Criminal Offences Act, 1960 [Act 29]. Now, the law is quite trite that the standard of proof in every criminal trial is proof beyond reasonable doubt. For it is stated in S. 13(1) of the Evidence Act, 1975 (NRCD

- 323) that in any civil or criminal action the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt. Thus, apart from the circumstances stated in *Apaloo v R* (*supra*), there may be other situations where the court may invoke S 173 of Act 30 and acquit and discharge. They include, though not exhaustive, where the evidence for the prosecution contains such conflicts and discrepancies as to mar that degree of certainty. See: *Yeboah v R* (1972) 2 GLR 281. In the oft-quoted case of *R v Adamu* (1960) GLR 91 @ 95 the principle was established that where the evidence of the prosecution was so inconsistent as to "contain the seeds of its own destruction" conviction could not be found on it. At this stage, we are required by law to

only consider whether the Prosecution established a prima facie case and not whether the guilt of the appellant could be inferred. The inference of guilt can only be properly made at the end of the full trial. This position is in accord with that policy of the law that the court has no mandate to make findings of fact at that stage of the trial where the prosecution has closed its case. Indeed, the issue as to what the court has to consider at the close of the case for the prosecution and what to determine at the end of the trial in its entirety i.e. after the accused has offered evidence in rebuttal, has been put beyond peradventure by the decision of the Supreme Court in *G/CPL Valentino Gligah & Anr v R* (Criminal Appeal No. J3/4/2009 (Unreported) delivered 6/5/2010. In that case, by a unanimous verdict the apex court speaking through Dotse JSC posited the law as appearing on page 5 of the manuscript judgment as follows: “.....it is important for this court to bear in mind that the Constitution 1992 article 19(2)(c) presumes everyone innocent until the contrary is proved. In other words, whenever an accused person is arraigned before any court in any criminal trial it is the duty of the prosecution to prove the essential ingredients of the offence charged against the accused person beyond any reasonable doubt. The burden of proof is therefore on the prosecution and it is only after a prima facie case has been established by the prosecution that the accused person is called upon to give his side of the story.” [emphasis underscored] Earlier on, the Supreme Court in that famous case, *Tsatsu Tsikata v R* [2003-2004] SCGLR 1068 has unambiguously articulated the ground on which a “Submission of No Case” may be entertained. It stated, inter alia, as follows: “..... [w]here the submission [of no case] is rejected and the case goes to trial, it is then that the judge or jury as appropriate, being the trier of facts, are called upon to determine whether or not the guilt of the accused has been proved beyond reasonable doubt.” The dicta established in the cases referred to supra, reinforces the principle of law that a prima facie case is not the same as proof which comes at the end of the trial when the court has to find whether the accused person was guilty or not. So, the law now appears settled that at the close of the case for the prosecution, the trial court has to consider only whether a prima facie case has been established and not whether the accused was guilty. And why would the court be required to consider whether a prima facie case was established as opposed to whether the guilt of the accused has been proved or inferred at that stage? The legitimate question was succinctly answered by that eminent criminal jurist, Taylor J (as he then was) in *R v Accra Special Circuit Court Exparte Akosah* (1977)2 GLR 283 @ 292 as follows: “At the close of the case for the prosecution a trial court ought not to attempt to make any findings of fact at all. Findings of fact can only be made after the close for the defence and the reason for this is because at the close of the case for the prosecution, all the facts in issue are legally rebuttable facts and therefore displaceable by evidence from the accused. A finding of fact at that stage can put the accused at such a disadvantage as to prejudice his case and make the trial most irregular.” [emphasis supplied] See also: *Comfort v R* [1974] 2 GLR 1. Therefore, if at the close of the Prosecution’s case the court made a finding of fact instead of considering whether a prima facie case has been made, the court will be presumed to have prejudiced the case of the defence and made the trial most irregular. It will be assumed then that the court had made up its mind at that stage of the trial. In the

circumstance, the law since the days of *The State v Ali Kassena* (supra) where it was stated that at the close of the case for the prosecution the judge has to decide whether from the facts the guilt of the accused could be inferred, has undergone considerable development. The correct and present position of the law is that at the close of the case for the prosecution the court has to consider whether from the evidence adduced, a prima facie case has been made out. It is only where evidence was led by the accused in rebuttal to the Prosecution's that the court was required to make findings of facts and to determine whether or not the accused was guilty. Needless to emphasize, we have painstakingly and critically considered the evidence led by the Prosecution. We have equally apprised ourselves with the able arguments of learned Counsel for the defence as well as that of the learned Senior State Attorney. We also state emphatically that we have given active consideration to all the arguments canvassed in support of, and as against, the Submission of No Case. It bears emphasis that having applied the principles stated supra to the case before us and having regard to the evidence led on record, we are persuaded by statements of the law to conclude that the Prosecution were able to establish a prima facie case against the appellant in respect of all the charges levelled against her. First, on the charge of stealing. The law provides in S. 124(1) of Act 29/60 that a person who steals commits a second degree felony. And S. 125 of Act 29 defines stealing as that a person steals if he dishonestly appropriates a thing of which he is not the owner. To establish the offence of stealing, the prosecution was required to prove the following three elements: i) ii) iii) the property so stolen is not the property of the accused; he must have appropriated it; and that the appropriation was dishonest. See: *Ampah v R* (1977) 2 GLR 171. See also: *Lucien v R* (1977) 1 GLR 351. All these 3 ingredients must be present contemporaneously so as to fix a party with the offence of stealing. As we shall demonstrate presently, the land title certificate, the subject matter of the trial is the PW1's because it is registered in his name. The evidence established that it did not belong to the appellant. The 2nd ingredient of stealing is appropriation. What is appropriation in law? The answer is given in S. 122 of Act 29/60 that enacts:

- (1) An appropriation of a thing by a trustee means a dealing with the thing by the trustee, with the intent of depriving a beneficiary of the benefit of the right or interest in the thing, or in its value or proceeds, or a part of that thing.
- (2) An appropriation of a thing in any other case means any moving, taking, obtaining, carrying away, or dealing with a thing, with the 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. The 3rd and the most crucial ingredient, among the others, is that the appropriation was dishonest. By law, an appropriation of a thing is dishonest if the following elements were present:
 1. It is made with an intent to defraud, or

2. If it is made by a person without claim of right, and with a knowledge that the appropriation is without the consent of a person for whom that person is trustee or who is owner of the thing, or that the appropriation would, if known to the other person, be without the consent of the other person.” Now, the facts of the instant case and by evidence led by the Prosecution, the land title certificate with registration number GA 12181, the subject matter of the trial belongs to PW1, the ex-husband of the appellant. The evidence established that the land for which the land title certificate was/is issued, was registered in PW1’s name. The evidence further established that the appellant used the land title certificate in securing a loan facility from Stanbic Bank in the sum of One Hundred and Fifty Thousand US Dollars [US\$150,000] for her company, Travel Bureau Ltd. There is that feeble argument by Counsel for the appellant that the matrimonial home for which the land title certificate was issued is a subject of matrimonial suit in a High Court. Without prejudice to the generality of that suit, the settled law is that property brought into a marriage remains the exclusive property of the party who brought it into the marriage. The evidence in the case showed that the property in respect of which the land title certificate was issued, was acquired by PW1 before his marriage to the appellant. As a general rule, property purchased by a spouse with his/her own money before marriage, belonged to that spouse to the exclusion of the other except where there was an express agreement that it was subsequently meant to be a joint property. See: *Bentsi-Encill v Bentsi-Enchil* [1976] 2 GLR 303. The facts in *Bentsi-Encill v Bentsi-Enchil* (supra) showed that the petitioner owned the property before his marriage to the respondent. It was therefore held that property purchased by a spouse with his own money belonged to that spouse to the exclusion of the other. In our present appeal, the appellant alleges that PW1 gave his consent to the property in question which the land title certificate covers, to be used as a security for a facility granted by Stanbic Bank to Travel Bureau Ltd. Although the company is commonly known to both parties, PW1 emphatically denies that he executed the statutory declaration that appears on p.319 [roa] vol. 1 in favour of the company for that loan facility as collateral. But ironically, in that said statutory declaration it was unambiguously averred to that the property in question belongs to PW1 exclusively. In that context, it is only reasonable to hold that if the contrary was the case that it was a joint property, the appellant should have protested or insisted at the golden opportunity to show that it was not the exclusive property of PW1. Insofar as the property for which a land title certificate was issued stands registered in PW1’s name and there has been no pronouncement by any court of competence jurisdiction that the property is jointly owned, it goes without saying that the property belongs to PW1 exclusively. That being the case, the use of the property by anyone else including the appellant shall be with the consent and approval of the owner, PW1. From the established evidence on record, the appellant appropriated the land title certificate when she took it from where PW1 kept it, without his knowledge, consent and or approval. The taking of the land title certificate was without a claim of right and it amounted to a dishonest appropriation. Dishonest appropriation is construed as not being a claim of right because it was not a joint property. The appellant did not have a claim of right to PW1’s land title certificate when she has not been expressly authorized to take it and to use it for any purpose whatsoever not sanctioned

by PW1. This other 2nd ground of appeal, therefore, fails and it is hereby dismissed. We now proceed to address the charge of Forgery of other document contrary to S. 159 of the Criminal Offences Act, 1960 [Act 29]. By law as stipulated in S. 159 of Act 29, a person commits a misdemeanor who forges a document, with intent to defraud or injure another person or with intent to evade the requirements of the law, or with intent to commit, or facilitate the commission of a criminal offence. The essential ingredients of the offence of forgery are as follows: i. That the accused made or altered the whole of a document or other thing subject matter of the charge or any material part thereof. ii. That accused must have had the intent that the document or other thing or any material part thereof so made or altered be believed to have been made or altered by any person who did not in fact make it or alter it, or to cause it to be believed to be what it in fact is not; iii. That the accused must have had intent to defraud or injure any person, or with intent to evade the requirements of the law or with intent to commit or facilitate the commission of any crime (in the case of forgery of any document whatsoever) or with intent to deceive (in the case of forgery of official or judicial document). Therefore, as rightly pointed out by the learned High Court judge, in proving the crime of forgery, the Prosecution shall, *inter alia*, demonstrate that there was the actual act of making or altering the document. See: *Okyere & anr v R* [2001-2002] SCGLR 833. In this court, learned Counsel for the appellant has profoundly argued that there was no evidence from the handwriting expert, PW2 to suggest that the signatures on the alleged forged documentations are that of the appellant. Furthermore, he argues that PW2 who examined the specimen signature of the appellant to determine whether the disputed signatures alleged to have been forged were that of the appellant failed in his evidence to do that. To Counsel, the only evidence connecting the appellant to the alleged crime was that she presented the documents to the bank for the loan facility. In support of his legal proposition that the elements of forgery were not established, Counsel referred this court to *Criminal Law in Ghana* @ p. 364 by P K Twumasi. The learned author had reasoned that an essential ingredient in the proof of a forgery charge was the identity of the person who committed the forgery. According to the author, it was insufficient in a charge of forgery to prove that the thing forged is a document. What was more essential was the proof that the accused forged it. In most cases there must be proof that the handwriting on the document alleged to have been forged was that of the accused, he added. It is the submission of learned Counsel for the appellant, therefore, that the Prosecution never led any evidence to the effect that the signatures on the alleged forged documents are that of the appellant. In response, the learned Senior State Attorney has also argued quite strongly that the evidence the Prosecution led all point to the fact that the complainant Martin Acheampong Danquah [PW1] was oblivious to the fact that his missing land title certificate had been stolen by the appellant. He did not also know that she had used same to secure a loan from Stanbic Bank but only got to know after he had been prompted by the Lands Commission, Counsel added. We think the submissions of learned State Attorney bear testimony to that fact and evidence led on record. See particularly pp 108-109; 115-121; 125-129; 133-134 [roa] Vol.1 whereby PW1 insisted and was unshaken under cross-examination that he knew next to nothing about the documents submitted to the Stanbic

Bank for that loan facility of US\$150,000. Significantly, the evidence of PW3, Karen Walmsley corroborates in material particular that of PW1 that PW1 never signed the documents that were submitted to the bank. Her testimony that at the time she signed the documents she was presented with she never saw PW1 and even though the document had stated that she and one Patricia Ayisi had witnessed PW1 signing the oath of proof, PW1 was not present and that she did not also know the other signatory on the document, Patricia Ayisi remained unshaken. She did maintain that she only signed the documents upon the instructions of the appellant. Now, having regard to this piece of corroborative evidence of PW1 by PW3, it whittles down the argument of Counsel for the appellant and legal proposition that it was insufficient in a charge of forgery to prove that the thing forged is a document but that what was more essential was the proof that the accused forged it. Although admittedly at that stage of the trial the appellant could not have been found guilty for forgery for having signed those documents, in the context where those who are claimed to have signed the documents as witnesses to PW1 executing the documents now say PW1 was not present at the time of the alleged execution of the documents and that it was the appellant who handed over them to sign, it calls for explanation from the appellant to rebut the prima facie evidence of the Prosecution that the appellant forged the documents. The consequence of the call for an explanation from the appellant is that the appellant has to enter the dock and enter into her defence. We do also affirm the finding of the High Court that apart from the conclusions reached by the report by the handwriting expert, PW2, PW1 adduced sufficient evidence to show that he did not sign the deed of mortgage, the consent letter for his land title certificate to be used as collateral as well as the acceptance letter for the loan facility in 2017 at the time the marriage between PW1 and the appellant has been dissolved and at a time he has ceased to be a director of the appellant's company, Travel Bureau Ltd. This other ground of appeal, therefore, also fails. Overall, we find and do emphasize that the Prosecution at the close of its case were able to establish all the essential ingredients of the 4 charges levelled against the appellant. The appeal therefore fails in its entirety and is hereby dismissed. We have no good cause to disturb the judgment of the High Court dismissing the appeal from the District Court, neither do we upset the ruling of the trial court dismissing the submission of no case by Counsel for the appellant. In the final analysis, we order the appellant to proceed back to the trial District Court to open her defence within 14 days from today. This order shall be served on the trial court. Registrar to carry out. SGD P. BRIGHT MENSAH (JUSTICE OF THE APPEAL) I AGREE MARGARET WELBOURNE (JUSTICE OF THE APPEAL) SGD I ALSO AGREE JANAPARE BARTELS-KODWO (JUSTICE OF THE APPEAL) SGD COUNSEL DIVINE KAFUI AKPALO FOR THE ACCUSED/APPELLANT NANA ADOMA OSEI (SSA) FOR THE REPUBLIC/RESPONDENT 24

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