

GHANA / JUDGMENT

Republic Vrs Kwakye and 2 Others

[2023] GHACC 296 (10 February 2023)

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1 IN THE CIRCUIT COURT HELD AT MPRAESO ON FRIDAY 10TH DAY OF FEBRUARY 2023
BEFORE HIS HONOUR STEPHEN KUMI ESQ CIRCUIT JUDGE. COURT CASE NO. B9/34/2022. THE
REPUBLIC V MICHAEL KWAKYE AND 2 OTHERS

JUDGMENT:

The following accused persons- Michael Kwakye, Prince Oteng @ Papapii and Abdul Rahman Issah as A1, A2 and A3 respectively- have been charged with and put before this court on some five (5) separate counts. To be more specific, the A1 is charged with one count each of causing unlawful damage contrary to section 172; unlawful entry contrary to section 152; and stealing contrary to section 124 (1); all under the Criminal and Other Offence Act, 1960, Act 29, as amended. In the case of the A2 and A3, each of them faces one count of dishonestly receiving contrary to section 146 of Act 29/1960 (supra). The above-mentioned accused persons are before this court because the prosecution alleges that on the 27th day of January, 2022, the Complainant- a teacher by profession- locked her doors and went to work. She however came back to the house around 6:00pm and detected that her door had been damaged and opened ajar. Complainant made a beeline for the police station to make a formal report to the police. The police would accompany her to the house and upon inspection found the loss or theft of the following items of the Complainant: one (1) 49 inches plasma television set valued GHC 5,887; one (1) Toshiba laptop computer valued GHC 2,000; and 1 Infinix Hot 3 mobile phone valued GHC 600.00. Subsequently, it happened that the A1, Michael Kwakye, who had already been arrested and detained in connection with a separate stealing case and in the case of his interrogation, admitted he was the one who had broken into the Complainant's room and eventually stealing the above-mentioned items. The A1 mentioned the A2 as a taxi driver who used his car to convey the items to a nearby at a charge; while he also mentioned the A3 as the one he sold the television set and laptop to at the price of GHC 400.00 each. 2 That led to the arrest of the A2 and A3 who denied the allegations in their separate cautioned statements to the police. Following the conclusion of police investigations, the accused persons were charged and put before this court. The three (3) accused persons, upon their arraignment before this court, pleaded not guilty to all the above-mentioned counts. That required the court to hold a trial to receive evidence to investigate and determine their guilt or otherwise. EVIDENCE ADDUCED BY THE PROSECUTION:

The prosecution called some two (2) witnesses to prove their case against the accused persons. They were the Complainant and the police investigator as PW1 and PW2 respectively. The first prosecution witness- that is the Complainant in the case- is Mary Adu. She testified that on 27th January, 2022, she locked her doors and went to school. She returned home at about 4:30 pm to find the door to her room damaged and opened ajar and out of fear and in her confusion went to make a report to the police. She gave the value of the damaged door to be GHC 120.00. She later returned to the house in the company of the police and upon inspection detected the loss or theft of the above-mentioned items from her room. She had also found her room had been ransacked. According to her, she was later informed by the police that the A1, who had been arrested and detained in a different stealing case, had during interrogations, confessed to have been the who stole the above- mentioned items of hers; after which he sold them to the A3 at Nkawkaw. It is important to state that at the end of the evidence-in-chief of the PW1, all the accused persons refused or declined to cross-examine the PW1 on her evidence. This was despite the best efforts of the court in explaining the legal effect of refusing to cross-examining the witness. However, they insisted and stood their grounds. So the court went on to hear the evidence of the police investigator in the case. He was Detective Sgt. Eric Nagadzi Tetteh of the Mpraeso police station. His testimony essentially corroborated what the PW1 has already stated on record, his visit to the scene of crime and the subsequent admission of wrongdoing by the A1 who was then being held for a different stealing case. According to him, the A1 mentioned the name of the A2 as a taxi driver who used his taxi car to convey the items from Mpraeso to Nkawkaw; while he mentioned the name of the A3 as the one he sold the television set and laptop computer to at the price of GHC 800 and GHC 400 respectively. 3 He also said that he took investigation cautioned and charge statements from the accused persons; which he tendered into evidence and the same marked as Exhibits A and A1, B and B1 and C and C1 respectively, without any objection from either of them. It is also important to state that none of the accused persons cross-examined the PW2.

CASE OF THE ACCUSED PERSONS: The court, at the close of the case of the prosecution, was satisfied and convinced that the evidence as adduced by the prosecution, had succeeded to establish a prima facie case against each of the accused persons on the respective counts they face. The court therefore called upon and asked them to open their respective defences on all the counts in order to avoid a ruling of the court against them on the issues in dispute. This position is statutorily provided for under section 174 of the Criminal Procedure Act, 1960, Act 30, as follows: “At the close of the evidence in support of the charge, if it appears to the court that a case is made against the accused sufficiently to require him to make a defence, the court shall call upon him to enter into and shall remind him of the charge and inform he that, if he so desires, he may give evidence himself, or make a statement...” The A1 in his sworn defence rather testified to admit to all the charges against him. He stated further that he went to steal the LG television set and a Toshiba laptop from the PW1; after which he went to deliver the items to the A3, Abdul Rahman. The A3 cross-examined the A1 to deny receiving the said items from him. The A1 called one witness; his aunt by name Charlotte Kissi Biah. The essence of her testimony that following the incident, the A2 came to plead with her- both in his own name and on behalf of the A3- so she could lead him before the Complainant to apologize over her stolen items and also to make the appropriate restitution to the Complainant. She added that the A3 spoke to the A2 for

the latter to make enquiries about the price of the items in that regard. The A2 cross-examined the witness of the A1 to deny going before her and having any such discussions with the witness. For the A2, he also gave a very terse defence. He told the court he was not guilty because he did not use his taxi car to convey any stolen items. That was all he said. But that was not the end as the A1 asked some questions to challenge the evidence or defence of the A2. 4 For example he asked the A2 that on the 27th day of January, 2022, the A2 came in his car to convey the items in question; and also that it was why upon the arrest of the A2, he (A1) was able to mention the name, phone number and car registration number of the A2. A2 denied all of them. The A2 thereafter closed his case without calling a witness. In terms of the A3, he also testified to deny the evidence or claims of the A1. According to him, the evidence by the A1 that he sold or delivered a 49 inches and LG television set and a Toshiba laptop computer from him is not true. He added that he has no knowledge of the offences. The A3 as part of his defence called two witnesses. The first (DW1) was Alex Yeboah. According to him, no one ever brought the said LG television set and Toshiba laptop computer to the A3 to buy. From his evidence, and from his answers during the cross-examination, he appeared not to have any idea about the dealings between the A1 and A3. The second witness for the A3 was Yaw Alhassan. His evidence was that the A1 could not have possibly delivered the items in question to the A3 to buy because on the date in question- that is 27th January, 2022- he went with the A3 to the bush or farm around 10:30am and only returned around 5:30pm. The A1 cross-examined the DW2 to challenge his evidence; insisting he brought the items in question to the A3. APPLICATION OF THE LAW: ISSUE FOR DETERMINATION: On the whole of the evidence before the court at the end of trial, the sole question for determination is whether or not the prosecution succeeded to establish or prove the guilt of the accused persons beyond reasonable doubt. ADDRESSING THE ISSUE: As has been said above, the accused persons came to the court and pleaded not guilty on the charges. The effect of their pleas was as follows in law, especially in a criminal case of this nature: “Unless it is shifted, the party claiming that a person has committed a crime or wrongdoing has the burden of persuasion on that issue”. See section 15 of the Evidence Act, 1975, NRCD 323. It may also be important to mention section 11 (2) of the Evidence Act, NRCD 323, which provides as follows:- “11(2) in any civil or criminal action the burden of producing evidence, when it is on the prosecution as to any fact which is essential to guilt requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of the 5 fact beyond reasonable doubt.” Meanwhile, in terms of judicial pronouncements on this burden and standard of proof in criminal trials, in the case of *Donkor v The State* [1964] GLR 598, SC, it was held inter alia by the Supreme Court of Ghana that in criminal trials, the burden of proof in the sense of the burden of establishing the guilt of the accused is generally on the prosecution, which burden must be discharged beyond reasonable doubt. This burden of proof that the prosecution must satisfy in the present proceedings was famously captured in the following ipsissima verba of Viscount Sankey, LC in the case of *Woolmington v. DPP*

(1935) AC 462. The learned Lord Chancellor delivered of himself thus; “No matter what the charge or what the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be

entertained....". In order to satisfy the Constitutional, statutory and Common Law threshold of proof beyond reasonable doubt, the law is that "the prosecution has a duty to prove the essential ingredients of the offence with which the appellant (accused) and the others have been charged..." See the case of *Frempong alias Iboman v The Republic* [2012] 1 SCGLR 297, SC per Dotse JSC. I will start with the offence of causing unlawful damage. The offence of causing unlawful damage is provided for under section 172 (1) of the Act 29/1960 (*supra*). That section or provision essentially requires that for a person or an accused to be guilty for that offence, the evidence should show that an accused caused the damage intentionally and unlawfully. See the case of *Yeboah and Another v The Republic* (1999-2000) 1 GLR 149, CA, per Gbadegbe J (as he then was). Section 172(1) of Act 29 which creates the offence of unlawful damage provides in subsection (1) (a) that where the value of the damage does not exceed "GHC100 or to no pecuniary value" the offender shall be guilty of a misdemeanour; but where the value exceeds GHC100, the person shall, according to subsection (1) (b), be guilty of a second degree felony. 6 In the instant case, the Accused herein was charged under section 172 without making a distinction, even though the facts and the charge state the value of the door lock to be GHC 120.00. In addition, it is realized that the prosecution, especially through the PW1 and PW2, also failed to lead any evidence as to the value of the door allegedly damaged. However, they testified that it was the A1 who caused damage to the door by forcefully breaking into the rooms. Despite the above deficiencies in the evidence of the prosecution, it is my considered opinion that they cannot be fatal to the case of the prosecution on the charge of causing unlawful damage. This is because section 172(1) of Act 29 creates only one offence of unlawful damage, and only distinguishes between a minor type, i.e. 172(1) (a) and a serious/major type, i.e. 172(1) (b). See the case of *Homenya v The Republic* (1992) 2 GLR 305 (HC). In the *Homenya v Republic* case (*supra*), Acquah J (as he then was), held and delivered himself as follows to state and show that even if the prosecution in this case failed to adduce evidence as to the specific value of the damaged door lock, same cannot be fatal and that an accused can appropriately and lawfully be convicted and found guilty on the misdemeanour or minor type of unlawful damage even when the true value of the damage was not proved to the satisfaction of the court: "Furthermore, in respect of the minor type, it is still an offence even if the damaged property has no pecuniary value. Thus where there is no evidence on the value of the damaged property, the appellant could lawfully be convicted under section 172 (1)(a) by virtue of section 154(2) of the Criminal Procedure Code, 1960 (Act 30). In *Asante v The Republic* (1972) 2 GLR 177, Anterkyi J., faced with a similar problem, reasoned in the manner I have stated above. He said at 197 of the report: "In the present case there was no evidence with regard to the value of the damage to the trousers. But section 172(1) (a), as to the value of the damage states, 'to a value not exceeding £100 or to no pecuniary value.' And it can therefore be inferred from the fact of the value of the damage to the trousers not having been established in evidence that the damage thereto was of no pecuniary value, and, therefore, such value suffices to secure conviction." Thus if the conviction of the appellant herein is valid, I can by virtue of section 154 (2) of Act 30 acquit him under section 172(1) (b) and convict and sentence him

under section 172(1) (a) of Act 29”. The second charge is unlawful entry; which is provided for under section 152 of Act 29/1960 (supra) as follows; “A person who unlawfully enters a building with the intention of committing a criminal offence 7 in the building commits a second degree felony”. However, the immediately succeeding section 153 explains the offence of unlawful entry thus; “A person unlawfully enters a building if that person enters otherwise than in the exercise of a lawful right, or by the consent of any other person able to give consent for the purposes for which that person enters”. From the above provisions, it appears that for the prosecution to succeed at obtaining conviction for the offence of unlawful entry, the prosecution must prove or establish beyond reasonable doubt that a person charged for the offence entered the building or premises not only in the absence of exercise of any lawful right or by the consent of any person able to give consent, but it must also be proved that the person charged entered the room or building with the intention to commit a criminal offence. So that in the case of *Kanjarga v The State* (1965) GLR 479, SC, it happened that a servant who broke into his master’s room and made away with the master’s property, was convicted of stealing and unlawful entry. His appeal against the conviction for unlawful entry was allowed on the grounds that the servant had access to the room in the performance of his servant duties. It was held accordingly that the prosecution had failed to establish that the appellant entered the room with the intention of committing a crime. Meanwhile, on the count 3, section 124 (1) of Act 29/1960 creates the offence of stealing in terms of the count 4. It states that “a person who steals commits a second degree felony”. However, section 125 of Act 29/1960, defines the offence of stealing under our statute: Stealing is defined under that section as; “A person steals who dishonestly appropriates a thing of which that person is not the owner”. In the case of *Brobbeey and Others v The Republic* [1982-83] GLR 608, Twumasi J (as he then was) stated the essential elements of stealing under Ghana laws were stated to be as follows:

- (i) The person charged must have appropriated the thing allegedly stolen. (ii) The appropriation must be dishonest (iii) The person charged must not be the owner of the thing allegedly stolen. So, the main two (2) conditions that must exist or be established in a case of stealing is dishonesty and appropriation; or dishonest appropriation. In the case of *Anang v The Republic* [1984-86] 1 GLR 458, 8 dishonesty in the offence of stealing was stated to connote “moral obloquy such a nature as to cast a slur on the character revealing him as a person lacking in integrity or as a plainly dishonest person....” Meanwhile, appropriation is defined under section 12 (1) of Act 29/1960 (supra) to mean “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”. Similarly, under section 122 (2) of the same Act 29/1960 (supra), 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, or part of that thing....” The offence of dishonestly receiving per section 146 of Act 29/1960 (supra) reads as follows: “Whoever dishonestly receives any property which he knows to have been obtained

or appropriated by offence punishable under this Chapter shall be liable to the same punishment as if he had committed that offence". However I must emphasize that section 146 only creates the offence in the statute. It is section 147 of Act 29/1960 which defines and states the ingredients of the offence of dishonestly receiving as follows: "A person is guilty of dishonestly receiving any property which he knows to have been obtained or appropriated by any crime, if he receives, buys or in any manner assists in the disposal of such property otherwise than with a purpose to restore it to the owner". So that in the case of *Rahim Ibrahim v The Republic*; Unreported, Criminal Appeal No. H2/2/201; delivered on 19th July, 2017, the Court of Appeal, per Ackah-Yensu JA, held as follows to state the ingredients and scope of the offence of dishonestly receiving; what the prosecution must do to obtain conviction and what a court or judge must look out for; "When a person is charged with dishonestly receiving the prosecution must prove the following essential ingredients, namely (1) that the accused received property which he knew to have been obtained or appropriated by crime, and (2) that the receipt of the property was essential. These two essential elements constitute the actus reus and mens rea of the offence of dishonestly receiving. Proof that the accused person receiving something which has been stolen or obtained by any crime is not sufficient. There must be further proof that the accused person knew that the thing had been stolen or obtained by crime. Since the proof of guilty knowledge on the part of the accused person is essential to the constitution of the offence. 9 It is the duty of the court to satisfy itself that the accused knew that the property had been obtained or appropriated by crime. It has been held by the Court of Criminal Appeal in England in the case of *R v Johnson* (1911) 6 Cr. App R. 218 that knowledge that the property has been stolen must exist at the time of receipt of it by accused". On the strength of the little discussion about the nature of the offences in this judgment, and their essential ingredients that the prosecution ought to prove in such cases , I would now go ahead and determine the issues in this case as to whether or not the case of the prosecution succeeded to prove beyond reasonable doubt that the accused persons herein committed the alleged offences. I will thus resolve the identified five (5) main counts jointly and together as one as they appear to flow from each other. I wish to begin by saying that oftentimes, people charged with a crime are caught "red-handed"; which is popularly or colloquially referred to as "feeli-feeli" (in flagrante delicto). Therefore in proving the guilt of an accused, the evidence that the prosecution would rely on in such a scenario is the direct evidence of the witnesses who have sworn to have used their eyes seeing an accused commit the stated offence. At the other end of the spectrum however, other times, allegations of criminal wrongdoings may be supported and proved by what authorities may refer to as circumstantial evidence. Yet still, the guilt of an accused person may be proved by the voluntary confession or admission of the offence by the accused. From the evidence adduced by the prosecution and indeed based on the whole of the evidence before the court- as captured above- it can be safely be said and accepted that two of the above-mentioned species of evidence were adduced at the trial. The first was the voluntary confession or admission of the A1 to the crimes. Specifically, the A1 had both in his unsworn statement (cautioned statement) and his sworn evidence in the witness box at the trial admitted or

even confessed to the offences. The A1 had also in the cautioned statement only mentioned and identified the A2 as his accomplice who used his taxi car to convey the items from Mpraeso to Nkawkaw where they were eventually sold to the A3 by the A1; albeit the A2 and A3 vehemently denied their involvements and knowledge of the A1 and the stated crimes. In the considered opinion of the court, some two different but related 10 repercussions or consequences flowed from the above pieces of evidence, especially by the evidence of the A1. The first is that by the confession statement of the A1- whether sworn or unsworn- the A1 accepted or confirmed his guilt and by extension relieved the prosecution of its duty- even if belatedly- to prove his guilt beyond reasonable doubt. This conclusion is supported by Article 19 (2) (c) of the 1992 Constitution as follows: “(2) A person charged with criminal offence shall (c) be presumed innocent until he is proved or has pleaded guilty”.

Additionally, in the case of *Agogrobisah v The Republic* (1995-96) GLR 557, Acquah JA (as he then was), held inter alia as follows to illustrate the power of this court convicting and finding the A1 guilty on the counts based on his own confession or admission; “I concede that a free and voluntary confession of guilt by an Accused, whether in court or outside the courtroom, if it is direct and positive, and is duly made and satisfactorily proved is sufficient to warrant a conviction without any corroborative evidence...”. See also the case of *Ayobi v The Republic* (1992-93) 2 GBR 769 at 777, CA, per Amuah JA (as he then was). On the basis on the foregoing, the court accordingly finds and holds that the prosecution succeeded to prove beyond reasonable doubt the guilt of the A1, Michael Kwakye, on all the three charges against him. Meanwhile, the second consequence is in respect to the A2 and A3. I will start with the A3 before I deal with the A2. From the evidence, his name was mentioned as the one the A1 went to sell or deliver the items in question to as can be found in the latter’s unsworn cautioned statement and sworn evidence in court. The law is that while the unsworn evidence was evidence that only binds the A1 and inadmissible against the A3, however the sworn evidence of the A1 in the witness box is admissible against the A3. In the case of *Lawson v. Republic* (1977) 1 GLR 63 holding (3) it was held as follows: “... if two persons were jointly tried together, unsworn statements made by each were generally only evidence against him who made them. And such an unsworn statement would be inadmissible evidence where (as in the instant case) it was made in the absence of the Appellant who denied it at the trial, and the co-accused repudiated it when cross-examined by the 11 Appellant. Even if the unsworn statement had been made in the presence of the appellant, its admissibility would depend on what part of it he expressly or impliedly accepted. Dicta of Lord Atkinson in *R v. Christie* (1914) AC 545 at pp.554 and 555 - 556 PC of Lord Parker C.J.” However if such a statement was repeated on oath at the trial against an accused and the co-accused is cross examined on it would be admissible evidence against a co-accused. In the case of *Francis Yirenkyi*

- v. The Republic, CRA J3/7/2015 delivered on 17th February 2016 (unreported), SC, Akamba JSC (as he then was) had occasion to elaborate on the evidential value of confessions made against other accused persons. This is what he stated: “It is trite criminal law that a confession made by an accused person which is admitted in evidence is evidence against

him. It is however not evidence against any other person implicated in it (See Rhodes (1954) 44 CR. App. R. 23) unless it is made in the presence of that person and he acknowledges the incriminating parts so as to make them, in effect, his own. This position is in contrast with the evidence on oath of a co-accused in a joint trial, which is evidence for all purposes, including the purpose of being evidence against the accused. (See Rudd 1948 32 Cr. App. R. 138 In applying the above principle to the instant case, the court found the evidence of the A1 on oath as credible and admissible evidence against the A3. The court finds that the A3 even in his unsworn cautioned statement admitted dealing with and receiving the television set and laptop computer from the A1 in exchange for GHC 400.00. However, the A3 in open court and in the witness box on oath sought to recant that, saying the A1 never brought the said items to him to be purchased. The A3 in his sworn evidence failed to offer reasonable explanation for the inconsistency, which the court finds to be afterthoughts and total fabrications. The courts have always denounced such deplorable conduct of witnesses and ruled to disregard their testimonies. See the case of Gyabaah v The Republic (1984-86) 2 GLR 461. The ongoing discussion brings to the fore section 148 (1) of the Act 29/1960 (supra) which reads as follows; “where a person is charged with dishonestly receiving and is proved to have had in his possession or under his control, anything which is reasonably suspected of having stolen or unlawfully obtained, and he does not give an account to the satisfaction of the court as to how he came by it, the property may be presumed to have been stolen or unlawfully obtained and the accused may be presumed guilty of dishonestly receiving in the absence of evidence to the contrary”. In the case of Rahim Ibrahim and 3 Others v The Republic, (supra); Barbara Ackah-Yensu JA (as she then was) also held inter alia thus; “Therefore, where evidence is adduced to show that an item found in the possession of an accused was stolen, the accused has the legal burden of proving how he came by that item..”. The A3 was thus required to call or adduce reasonable and genuine explanations as to how he received the items in question. From his cautioned statement, he had stated that the A1 once came to his shop to repair a device; and that the A1 subsequently came to his shop in the company of another person where the A1 asked him to collect and keep the above-mentioned items in exchange for some GHC 400 with the promise or agreement that an elderly brother of the A1 who owned the items will later refund the money and take back the items. The court found the explanations of the A3 not reasonably probable or reasonably true. This is because there is no evidence before the court that the A3 knew the A1 very well or that the A3 knew the said brother of the A1 or that the A3 even made reasonable efforts to contact and confirm from the said brother of the A1 if he had given his consent to the A1 to deal with his items when the A1 took the goods there. In law knowledge may be actual, imputed, inferred or constructive. In Asamoah v The State [1962] 2 GLR 207, SC, it was held, with regard to the standard of proof knowledge, that it is not necessary for the prosecution to lead evidence of actual knowledge. Evidence from which the knowledge of the accused may be justifiably inferred is sufficient. Where the ordinarily prudent person would have received the required information if he had taken the trouble to make enquiries, then knowledge would be imputed to anyone so placed who failed to make the necessary enquiries. See the case of Republic v Winfred Osei Wusu; Unreported;

FT/0036/2016; delivered on 29th June, 2017; per Asare-Botwe J (as she then was). Under those circumstances, the reasonable and irresistible inference by the court is that the A3 was imputed with the knowledge that the items that the A1 brought to him for GHC 400.00 could have been stolen or obtained from crime. In other words, the court holds that the A3- in all the circumstances- should or ought to have known that the television set and laptop computer could have been obtained from crime. 13 The court also considered the testimonies of the two witnesses for the A3 but found them not credible and sufficient enough to rebut the prima facie evidence against the A3. For example, the DWI for the A3, Alex Yeboah, clearly had no personal knowledge about the dealings between the A1 and A3. He failed to give satisfactory reasons why he believed the A1 never brought or sold the items to the A3. In the case of the DW2, Yaw Alhassan, his evidence that the A1 could not have brought any items to the A3 failed and could not carry more weight than the cautioned statement of the A3 in which he had admitted receiving the items from the A1. For the above reasons, the court finds credible, admissible and sufficient evidence on the test of proof beyond reasonable doubt that the A3 dishonestly received the items in question from the A1. The A3 is accordingly convicted and found guilty guilty on the count 5. COUNT 4 AGAINST THE A2: On this count, the allegation is that the A2 was hired by the A1 to use his taxi to convey the item from Mpraeso to Nkawkaw where the A1 eventually sold them to the A3 as has been found and determined by the court above. The A2 has denied the allegations both in his unsworn cautioned statement and sworn evidence in the trial. So it was important for the prosecution to not only prove that the A2 used his taxi to convey the items from Mpraeso to Nkawkaw, but more importantly to show that before or at the time the A2 used his car for that, he knew or ought to have known that he was conveying stolen items or items obtained through crime. The main evidence that the prosecution sought or appeared to rely on to prove their case against the A2 was that of the statement or evidence of the A1. The A2 had stayed that upon his arrest and when cautioned mentioned that after stealing the items, he hired the A2 to use his taxi to convey the items from Mpraeso to Nkawkaw. In court however on oath, the A1 did not mention the name of the A2 and by extension whatever active role he played in conveying the items to Nkawkaw. With what has been said about the admissibility and legal use of the out of court statement made by an accused person in relation to a co-accused, then the reasonable conclusion is that there was no credible and admissible and sufficient evidence against the A2 at the end of the trial. 14 The court had also considered the evidence of the aunt of the A1 who testified essentially that the A2 came to see her so she could lead him and the A3 before the Complainant to apologize and to compensate her for the stolen items. The A2 denied doing that. Now, even if the A2 did that, the court finds that apart from it appearing to be hearsay evidence and thus generally inadmissible, the court finds that the statements and discussions were towards settlement or to compromise the criminal action and thus inadmissible evidence to legally and sufficiently prove the guilt of the A2 beyond reasonable doubt. What took place there and the communications that ensued is what is referred to in law as “privileges on compromise”. It is accepted under the law that for the purposes of and in order for parties to settle a dispute or compromise an action, the parties may engage in communications, in order to make offers and counter

offers. For example, it is not uncommon for young people who have a dispute with elders to accept blame or liability and apologize to the elders, even when the young people are innocent within the customary settings and practices in Ghana. People can even accept blame or liability out of respect for the elders or just to make peace and move on with their lives, and not really because they are genuinely at fault. In order that such communications will not be used to prejudice the positions of the parties in future court actions, such settlements are done without prejudice. In the case of *Davies v Kuma*, WACA, delete on 15th January, 1952, Coussey J (as he then was) held that; "It is a settled principle that nothing which passes between parties in any attempt at arbitration or compromise should be allowed to effect the slightest prejudice to the merits of their respective cases at it eventually comes to be tried by the court" It is therefore the judgment of the court that the prosecution failed to adduce credible and quality and admissible evidence to prove the guilt of the A2 beyond reasonable doubt on the count 4 against the A2. The A2 is therefore acquitted and discharged on the count 4. SENTENCING: In determining the appropriate sentence for the convicts herein, I must state that in the course of the trial, it came to light that the A1, Michael Kwakye, was a juvenile at the time of the commission of the offences. The prosecution agreed with that. 15 Since his trial before this court would not be irregular as he was charged together with the A2 and A3 who are adults, however the law is that this court lacks the jurisdiction to punish him following his conviction. It is therefore ordered for the A1, Michael Kwakye, to be taken to the Juvenile Court at Nkawkaw, for the said forum to deal with him according to law. As a corollary to that, it is also ordered for the Registry of this court to prepare and transmit the relevant record to the Juvenile Court, Nkawkaw, for the purposes of the sentencing for the A1. Meanwhile, in terms of the A3, I have had to consider the authority of *Kwashie v The Republic* (1971) 1 GLR 488, which provides for the factors to be considered by a court before imposing the length of sentence on a convict. In that regard, I have taken into consideration mitigating factors such as the youthful age of the A3 and his plea for leniency from the dock. The court has also taken into consideration the about 7 days that the A3 has spent in lawful police custody after the court revoked his bail following his conviction and pending the sentencing. See Article 14 (6) of the 1992 Constitution. Most importantly, the court has been informed by the prosecution- and same confirmed by the PW1- that the A3 has given a brand new 49 inches television set to the PW1 as compensation. Despite that, the court also notes the above aggravating factors that go against the A3; in terms of the fact that as a professional teacher he ought to have known and done better. It is also noted that such offences are becoming a commonplace in this area and there is a need to curb or nip them in the bud. To that end, the A3, Abdul Rahman Issah, is hereby sentenced to pay a fine of two hundred (200) penalty units; or in default he is to serve twelve (12) months imprisonment in hard labour. In addition- and in order to ensure he behaves more responsibly in the future- he is sentenced to execute a bond to be of good behavior for twenty-four (24) months; or in default, he is to serve six (6) months imprisonment in hard labour without the option of a fine then. The A3 is informed of his statutory right of appeal if he so desires. SGD. H/H STEPHEN KUMI (CIRCUIT JUDGE).. s.k..

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