

GHANA / JUDGMENT

REPUBLIC VRS. DZITOR AND OTHERS (CR/0628/2021) [2025] GHAHC 65 (7 April 2025)

[2025] GHAHC 65

COURT

High Court

CASE / FILE NUMBER

CR/0628/2021

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IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE, LAW COURT COMPLEX (CRIMINAL DIVISION “2”) HELD IN ACCRA ON MONDAY, 7TH DAY OF APRIL, 2025 BEFORE HER LADYSHIP JUSTICE MARIE-LOUISE SIMMONS (MRS.), JUSTICE OF THE HIGH COURT CASE NO.: CR/0628/2021 THE REPUBLIC VRS.

1. ERNEST DZITOR

2. SAMUEL YAO FIAGBEDZI

3. PROSPER AVUMENYI

4. BENJAMIN KPLEVI

5. ISAAC KWASI AFEKU

6. RICHARD ADRI @ MUMUNI ===== RULING ON
SUBMISSION OF NO CASE ===== This ruling is
for the determination of the establishment of a prima facie by the Prosecution against the
Accused persons named herein. At completion of the Prosecution’s case on the 24th October
2024 and on that day, all Accused persons or their counsel were directed to file their
Submissions of No Case on or before the 29th November 2024 and for the Republic’s counsel
to respond within two (2) weeks upon being served with same. Subsequently, on the 13th
February 2025, none of the counsel for the Accused had filed any submissions. With plea
from the Accused persons to be granted another Page 1 of 29 opportunity, another chance
was granted for submissions to be filed on or before 28th February 2025. Submissions were
filed on behalf of 2nd Accused on the 25th February 2025 and on behalf of 6th Accused on
the 27th February 2025. The submissions on behalf 1st, 3rd, 4th and 5th Accused was
however filed on the 10th March 2025. Having failed twice to file within time, the
submissions on behalf of the 1st, 3rd, 4th and 5th Accused filed out of time was not
considered by the Court for the determination of this ruling. Be that as it may, this Court will

go ahead suo motu to make the determination of a prima facie case as is required of it under Section 173 of Act 30. I have considered the submissions on behalf of the 2nd Accused and 6th Accused and do appreciate the effort of counsel to aid the Court in the determination of this ruling. THE CHARGES AGAINST THE ACCUSED PERSONS The Prosecution per a substituted charge sheet filed on the 20th October 2021, charged all six (6) Accused under counts 1, 4, 5, 7, 8 and 10 for the offence of:

1. Being a Member of a Prohibited Organization contrary to Section 2 (1) of the Prohibited Organization's Act, 1976 (SMCD 20). All Accused were said to have been members of various prohibited organizations between 2018 and 2020. A1, A3 and A5 were also charged under counts 2, 6, and 8 Page 2 of 29 respectively for attending meetings of a Prohibited Organization. A1 within the periods 2018-2020, 2018-2020 for A3 and 2017-2020 for A5. There were charges were:
2. Attending Meetings of a Prohibited Organization contrary to Section 2 (1) (b) of SMCD 20. Under count three (3), A1 alone was charged with the offence of
3. Participating in the Campaign of a Prohibited organization for the period 2019. THE FACTS OF THE CASE The facts as provided by the Prosecution is that some prohibited Organizations known as Western Togoland Restoration front (WTRF) ,united Freedom Fighters (UFF) and concerned Citizens of western Togoland (CCWT) were formed after the arrest and release of one Charles Kwami Kudzordzi a.k.a Papavi Horgbedetor. He is said to be the founder and leader of the Homeland study group Foundation (HSGF) another prohibited Organization. From the facts, the aim of these organizations is to secede from the Republic of Ghana and form a new sovereign state. This new sovereign state is to cover the entire Oti and Volta regions and parts of the eastern and Northern region of the Ghana. Page 3 of 29 In fulfillment of their agenda many young people were recruited as members and added to various groups on social media platforms such as WhatsApp to assist in attaining independence from Ghana. Some young people were also trained to become the core of the rebel group that would eventually become the core of the rebel group that would eventually become the police and the military of the envisaged state. The Prosecution have stated that the A1, A2, A3, A4 and A5 all admitted to being members of the WTRF, whilst the A6 admitted to being a member of the CCWT, both being Prohibited Organizations. The Accused persons are said to have stated at their respective communities that they attended meetings that were being held by the executives of the WTRF. It was also said that T-shirts with the inscription "May day is our Day" and the map of Western Togoland were distributed to them to wear to raise more awareness of their agenda. The A1 in his Investigation Cautioned Statements is said to have admitted to taking part in the blocking of the road with trips of sand and burning tires, thereby causing vehicular traffic and inconvenience to motorists. The A4 also in his statement is said to have that admitted that in 2018 the executives of the WTRF held a meeting where he was conferred a title as the leader of the group in his community and everyone knew him as such. The A5 is accused of admitting to being a member of the WTRF showing his solidarity to the founder of the WTRF by

accompanying him to the police station when he was Page 4 of 29 arrested. Again it has been stated that when A5 was arrested some documents of WTRF were found and retrieved from his home. After investigations, thee Accused have been arraigned on the above stated charges for trial. BURDEN AND STANDARD OF PROOF ON THE PROSECUTION It is well settled and well-articulated under Article 19 (2) of the 1992 Constitution that an Accused person is presumed innocent until proven or has pleaded guilty. Sections 11 (3) and 15 (3) of the Evidence Act, 1973 (NRCD 323) provides that the Prosecution has the burden in a criminal trial to provide sufficient evidence to support a charge against an Accused person and must prove the existence of the facts and evidence adduced beyond reasonable doubt. The Standard of "Proof beyond Reasonable Doubt" has been excellently and aptly explained by the Eminent Lord Denning in the case of MILLER VS. THE MINISTER OF PENSIONS [1947] 2 AER AT PAGE 373 inter alia: "It need not reach certainty but it must carry a high degree of probability. Proof beyond reasonable doubt, does not mean proof beyond a shadow of doubt..." This Standard of Proof on the Prosecution is to be assessed after the end of the entire trial, when the version of the Prosecution and that of the Accused have been put before the Court. Page 5 of 29 However, the law enjoins the Prosecution to pass a first test after its case has been closed, for the Court to determine whether there is a need to call on the Accused person to open his/her defense. This test is for the Prosecution to at least establish, "a prima facie case". The case of the Prosecution must provide prima facie evidence from which the guilt of the Accused person may be presumed so that if the Accused person fails to open his defense without providing sufficient evidence to create doubts in the Prosecution's case, he may stand the risk of being found guilty. See Section 11 (3) of the Evidence Act, 1975 (NRCD 322) which states: "in a criminal action the burden of producing evidence when it is the Accused as to any fact the convers of which is essential to guilt, requires the Accused to produce sufficient evidence so that on all the evidenced so that a reasonable mind could have a reusable doubt as to his guilt." This is requirement on the Accused person is when the Prosecution has been able to establish all the elements of the offence the Accused person has been charged with. THE LAW ON SUBMISSION OF NO CASE Under Section 173 and 271 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) relating to Summary trials and trials on Indictment respectively, a trial Court is enjoined at the close of the Prosecution's case to decide if a case has been made out against the Accused person sufficiently to require the Accused to open his defense. If the Court establishes so, the Court is to call on the Accused to open his defense and if not, to acquit and discharge the Accused. This being a summary trial, Section 173 is relevant and it states a follows: "Acquittal of Accused When No Case to Answer. Page 6 of 29 Where at the close of 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." See cases such as STATE VS. ALI KASSENA [1962] 1 GLR, 144 SC APALOO VS. THE REPUBLIC [1975] 1 GLR 156, CA LOGAN VS. THE REPUBLIC [2007-2008] SCLGR 76 A prima facie case has been held by the Court of Appeal in the case of KWABENA AMANING ALIAS TAGOR AND ANOR VS. THE REPUBLIC REPORTED ONLINE ON GHALI LAW AS GHASC 47 [2002] DATED 28TH JULY 2020, ably quoted by counsel for A5 and

A6 to mean: “Evidence that can lead to the conviction of the Accused if he leads no evidence to rebut the presumption of guilt raised by the Prosecution”. The Court of Appeal had earlier stated in this case as follows: “in my view therefore that the requirement that the Prosecution has established a prima facie case against the Accused before the Accused could be called upon to open his defense is another way of saying that such evidence or case led must be such that it should leave no doubt in the mind of a reasonable person that it was the Accused who committed the offence so that where the Accused person failed to give any explanation to rebut the guilt staring in his face, he would by all means be convicted.” In the more recent case of THE REPUBLIC VS. HIGH COURT (CRIMINAL DIVISION) ACCRA, EX-PARTE: STEPHEN KWABENA OPUNI, ATTORNEY GENERAL INTERESTED PARTY [2021] JELR 109037 SC, the Court in reference to Page 7 of 29 the Dictionary of English Law, edited by Earl Jowitt (1959) Vol 2 pp 1401 & 1402 stated and defined prima facie. Prima facie means “at first sight, on the face of it”. It then goes on further to distinguish the literal definition from the legal one as follows: “Prima facie evidence (means) that which, not being inconsistent with the falsity of the hypothesis, nevertheless raises such degree of probability in its favor that it must prevail if believed by the jury unless rebutted or the contrary proved.” In the locus classicus case of THE STATE VS. ALI KASSENA [1962] by the Supreme Court quoted supra laid down the elements to be established by an Accused/Applicant in a Submission of No case as: “(a) Where there has been no evidence to prove an essential element in the offence charged.

- (b) Where the evidence adduced by the Prosecution has been so discredited as result of cross examination or is so manifestly unreliable that no reasonable tribunal could safely commit upon it.” The establishment of these elements have been supported further in cases such as THE STATE VS. ANNAN & OTHERS [1965] GLR, YEBOAH VS. THE REPUBLIC [1999- 2000] GLR, 600, CA. The Courts have held over the years that apart from the establishment of these two (2) situations above, a Tribunal or Court should not in general be called upon to reach a decision as to conviction or acquittal until the whole of the evidence which either side wishes to tender has been placed before it . Page 8 of 29 In addition, the PRACTICE DIRECTION (DISCLOSURES AND CASE MANAGEMENT IN CRIMINAL PROCEEDINGS) DATED 30TH OCTOBER 2018, state at its Section 5 (2) (a) that: “At the close of the case for the Prosecution, the Court shall on its own motion or on a submission of no case to answer, give a reasoned decision as to whether the Prosecution has or has not led sufficient evidence against the Accused person to require the Accused person to open his defense” The Practice Directions enjoins a Court to provide reasons for its decision as to whether a case has been made out against an Accused person or not. In that regard, even though the law gives the discretion to a Court to decide suo motu, whether a Submission of No Case is filed or not, the Court in that determination cannot just make a plain statement or ruling in its determination. THE ELEMENTS OF THE OFFENCES
1. Being a Member of a Prohibited Organization Section (2) (1) Of the Prohibited Organizations Act (SMCD 20) provides as follows:

- (1) On and after the commencement of this Act, it is an offence for a person, in relation to an organization referred Section 1 (i) to be a member of that organization. To have a better appreciation of what type of organizations this law seeks to prohibit I would reproduce Section 1 of SMCD 20. Page 9 of 29 Section 1 (a) and (b) of SMCD 20 provides that: “The following organizations are hereby declared unlawful and prohibited, namely,
- (a) the organization known variously as the Togoland Liberation Movement, “T. L. M.”, or “T. O. L. I. M. O.”, the National Liberation Movement of Western Togoland or “N. L. M. W. T.”, and
- (b) Any other organization, by whatever name it is called, whose objects include advocating and promoting the secession from the Republic of Ghana of the former British mandated territory of Togoland or part of that territory or the integration of that territory with a foreign territory.” From the requisite law aforementioned, the Prosecution need not establish that a particular organization has been specifically named and prohibited but is to establish that an organization exists and has objectives as stated under the above preceding section. To establish the offence of being a member of a Prohibited Organization under SMCD 20, the Prosecution must prove:
1. The existence of an organization or group with an objective being or including promoting or advocating for secession from the Republic of Ghana.
 2. That the succession must be of the former British territory of Togoland or part of it from the Republic of Ghana or
 3. The objective of such an Organization must be to integrate the Former British Territory of Togoland or a part of it to a foreign territory. Page 10 of 29
 4. That the Accused is a member of such an organization What then is an Organization in the context of this case? The oxford advanced dictionary defines an organization as: “An organized group of people with a particular purpose such as a business or a government department.” Wikipedia explains further, when it states: “You can use the word organization to refer to a group or business, or to the act of forming or establishing something.” It is also defined as a legal entity that involves several people who are attempting to accomplish specific objectives (website: <https://homework.study.com>) With these definitions, the Prosecution must prove that an Accused charged with this offence is in an organized group involving several people, with a particular purpose for its establishment or with a specific objective. This specific objective must be either under point 1, above that is with an objective of seceding from the Republic of Ghana or points 2 and 3 to integrate the Former British Territory of Togoland or a part of it to a foreign territory or the succession must be of the former British territory of Togoland or part of it from the Republic of Ghana. In order to also establish that any of the Accused was a member of such an organization, the Prosecution must prove that the Accused person charged was a Page 11 of 29 formally registered as member of the group, or b. had made payment of some sort of fees to the group See the cases such as NATIONAL LABOUR RELATIONS BOARD VS. INT’L ASSOC. OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS

- [1980] 641 F. 2D 816 (US) which established that payment of dues is a condition of union membership. COMMUNICATION WORKERS OF AMERICA VS. BECK [1988] 487 US 735 which also confirmed that payment of agency fees constitutes membership in a union. Membership can also be proved with the signing of a membership form, or d. proof of the issuance of a Membership card or Identity card. See cases from other common law jurisdictions such as AUSTRALIAN WORKERS UNION VS. AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION [2006] FCA 1595 and COMMUNICATIONS AND OTHER ALLIED SERVICES UNION OF AUSTRALIA VS. QUEENSLAND ALUMINA LTD [2011] FCA 382 which held that issuance of a union membership card constitutes and demonstrates proof of membership. Having e. voting rights or evidence of having participated in voting or f. having privileges peculiar to members of this organization or g. access to exclusive benefits of this group has also been held to be evidence of membership of a group or organization. Page 12 of 29 See THORNBURG VS. GINGLES, 478 U. S 30 [1986] It may also be proved that the Accused h. had complied with the organizational rules and regulations, or is (i) recognized by the organization's leadership or members or
- (j) had actively engaged in the activities of the organization or (k) contributed to such activities. See the cases of DELAWARE VALLEY CITIZENS COUNCIL FOR CLEAN AIR & WATER VS. COMMONWEALTH OF PENNSYLVANIA [1972] 455 Pa. 525 (US), RIPON SOCIETY, INC VS. NATIONAL RIPON SOCIETY (1975) 523 F. 2d 273 US, have held that participation in organizational activities constitutes membership. Proof of any, some or all of these will constitute proof of membership of an organization or group and the Prosecution must proof any of these to establish a prima facie case under counts 1, 5, 6, 7, 8, and 9.
2. Participating in the campaign of a prohibited organization The Oxford Learner's Dictionary define the word 'Participate' to mean, "to take part in or become involved, or share in an activity with others". Other Dictionaries also provide similar definitions. To participate in the campaign of an organization means therefore to actively support, contribute, raise awareness, or raise funds or resources to help the cause or goal of an organization. Page 13 of 29 In the successful prove of this charge, the Prosecution must prove that the Accused volunteered skills, time or funds to support or advocate on behalf of the organization.
3. Attending Meetings of A Prohibited Organization With this charge the Prosecution must prove against A1 and A3 either:
1. A physical presence or
 2. Engaging in activities such as listening, speaking, voting or contributing to discussions either virtually or by physical presence at meeting of any of the prohibited organizations they are deemed to belong. THE PROSECUTION'S CASE The Prosecution called two (2) witnesses. PW1, Detective Chief Inspector Godwin Kponyo. He testified relying on the witness statement filed on the 16th November 2021 which was adopted as his Evidence in Chief. In his statement he told the Court that he was stationed at the Intelligence Unit of the C. I. D Headquarters and had been with the Police Service for 22 years as at the time he was

testifying in Court. He said he knew all the Accused. He narrated that on the 25th September 2020, members of the WTRF staged a violent demonstration in certain parts of the Volta region and attacked Police stations at Aveyime and Mepe stealing away weapons and other articles in the custody of the Police. His testimony against each Accused person was that:

Page 14 of 29 On A1- Investigations revealed A1 was a member of the HSGF but left the group when his gadgets were seized by the District Chief Executive of the area where A1 resided. Under cross examination, PW1 confirmed that A1 stopped attending the meetings of the HSGF in 2015 when the DCE in his area seized certain items from him. Prior to that he said A1 attended meetings at Ho near the Police Training School. Under cross examination, the question was asked: “Q: You will agree with me that since 2015, A1 had not had any dealings whatsoever with the HSGF. Is that so? A: That is so my lady.” Again, under cross examination he confirmed to the Court that A1, A3 and A4 did not take part in the violent attacks at the Police stations in 2020 and in addition that there was no evidence that any of them received funds in furtherance of the activities of the HSGF. Neither was there any evidence of their ID cards. On A2 - PW1 testified per his witness statement that he belonged to a WhatsApp Group named “SIC ADMIN”. No other explanatory evidence in support of that group was provided. Under cross examination, PW1 laid emphasis on the fact that no evidence was found on the membership of A2 of any of the prohibited organizations. He also emphasized a search in the home of A2 revealed nothing incriminating. Again, it was confirmed that apart from being put on the said WhatsApp platform by someone, A2 did not participate in any discussions on that platform. He additionally Page 15 of 29 confirmed that there was no other evidence of his association with the said prohibited group. On A3 - The testimony against A3 was that he was captured in a group photograph with one Togeb Yesu and other persons wearing a Western Togoland branded T-shirt. It was added that such a branded T-shirt was found with the A3 upon his arrest and it was retrieved and the T-shirt was identified and marked as ID1. Under cross examination, PW1 told the Court that A3, A4 and A5 though did not take part in the attacks of the Police stations they took part in the prior meetings of the prohibited group that later caused the attacks and were all members of the group. He however admitted that he had been able to show proof of any participation or attendance of any such meeting(s) by A3 and A4. On A4 - PW1 also told the Court per his witness statement that during investigations A4 admitted he is a member of HSGF, a prohibited organization and had attended meetings of the HSGF on countless occasions. PW1 under cross examination further explained that A4 later switched groups to join the Western Togoland Restoration Front (WTRF) after the leader of the HSGF “went into exile”. He however agreed that he had no ID card or evidence of his participation in any such meetings. PW1 also testified under cross examination that a search in the room of A4 revealed nothing incriminating. Page 16 of 29 On A5 - The evidence against A5 states that on the 7th July 2020, a search in his room led the Police to retrieve a personal diary where he kept minutes of activities of the Western Togoland group. Also found in his room was handouts of the Western Togoland group. In the course of his testimony PW1 identified some items which he said were all found with A5 during a search. Also identified were the following: A diary as ID2, a brochure of the HSGF as ID3, a letter dated 22nd July 2016 as

ID4, letter dated 29th January 2016 as ID5, record of accounts for Youth Alive Artisans Association an affiliate of the HSGF was marked ID6, book titled Liberal groups on Western Togoland was marked as ID7. In addition, identified was a poster titled “No Vote in Western Togoland” was ID 8 whilst a Pink book with no title with its 1st page having the writing “Welcome address to Executives” was identified and marked as ID9. Then another book titled “Why Western Togoland wants to go independence” was marked as ID 10. Under cross examination, the ID5, a letter dated 29th January 2016 said to be been found in the room of A5 was tendered through PW1 and was marked as Exhibit 1. Questions on Exhibit 1 and their answers revealed that no name of any of the Accused persons appeared on it. PW1 again told the Court that A5 was a member of a group Youth alive Artisans Association which was formed as an Artisans Welfare Group but later veered off its core objectives and became an affiliate of the HSGF. Page 17 of 29 A6 - from his witness statement there seemed to be no link of A6 in his testimony. PW2 was Detective Inspector Eugene Akpo Glover, the lead investigator. He relied on his witness statement filed on 16th November 2021 and amended witness statement also filed on 12th April 2022 as his evidence in chief. He testified that he is has been in the Police service for 13years and that he knows all the Accused persons. He stated that A1 was arrested at Mepe and during interrogation, he admitted to being a member of the Homeland Study Group Foundation (HSGF) and that he had attended many meetings of the HSGF and because he owns an Information Centre at Mepe, his facility was used by the group to propagate their agenda prior to the arrest of Charles Kudzordzi @ Papavi. He further testified that A1 claimed to have disassociated himself from the group after he had been warned severally by persons including the D. C. E of the area as well as his family relations and friends. PW2 also testified on A2 that investigations revealed that A2 was a serving Warrant Officer with the Ghana Army and was a member of the (WTRF). He further testified that A2 was a member of a WhatsApp group named “SEC. ADMINS”, one of the WhatsApp groups of the WTRF for some selected members. PW2 informed the Court that A2 denied being a member of any prohibited organization and claimed that he had returned from United Nations (UN) Mission outside Ghana only to discover the “SEC. ADMINS” group on his phone and stated that he never made contributions on the platform. Page 18 of 29 On A3, PW2 testified that during investigations, they found a photograph of A3 together with the founder and leader of WTRF wearing White Western Togoland T- shirts and at the time of A3’s arrest, the white T-shirt was retrieved from his home at Juapong. PW2 tendered into evidence the Photograph of A3 with the leader of (WTRF), Michael Koku as Exhibit A and the White T-shirt taken from A3 with the WTRF inscription as Exhibit B. PW2 further testified that upon the arrest of A4 he admitted during interrogation that he was a leader of the HSGF at Volo in the Volta region where he lives. He said A4 stated that the leadership role was imposed on him by some strangers who visited Volo sometime in 2018 to talk to them about Western Togoland. Also on A5 and A6, PW2 testified upon the arrest of A6 in 2020 the diary already identified by the PW1 which had Western Togoland contents as well as handouts of Western Togoland (WTL) were retrieved from A5’s room. PW2 said that A5 denied ownership of the said items and claimed that he collected them together with other items from the room of a deceased friend whom he gave his name as “Answer me”. PW2

tendered into evidence the relevant page of the diary labeled as EG21 with the date 7th December 2017 as Exhibit C and the inventory taken by the police with the thumbprint of A5 as Exhibit D. PW2 further testified that A6 corroborated the evidence of PW1 and added that A6 had told the police that he and A5 belonged to the a Youth Alive Artisans Association Page 19 of 29 in Ho and that the founder of HSGF, Charles Kudzordzi once visited them in one of their meetings and spoke to them about the HSGF. That at the said meeting, branded T-shirts of HSGF were distributed. PW 2 said A6 told the police he had since disposed off his T-shirt. PW2 said that A6 stated A5 created a WhatsApp group with the name “Concerned Citizens of Western Togoland” and added him but he claims that he has never attended any of their meetings. PW2 also tendered into evidence the following: Documents labelled Homeland Security Group Foundation Annual General Meeting as Exhibit E, The Invitation letter to Congress dated 29th January 2016 as Exhibit E1, A poster with “no vote” inscription as Exhibit E2, Account of Youth Alive Artisan Association as Exhibit E3, A letter from HSGF to all Chiefs dated 22nd July 2016 as Exhibit E4, A booklet titled “Why Western Togoland wants to go Independent” as Exhibit E5 Youth Alive Carpenters Association Institution Constitution as Exhibit E6, A programme outline for Regional Dialogue in Democratic Devolution dated 22nd September 2016 as Exhibit E7, A letter from Institute of Democratic Governance to the Youth Alive Association, Ho dated 3rd September 2016 as Exhibit E8, A booklet labelled “welcome address at a breakfast meeting” as Exhibit E9 The HSGF handout titled AGM 2016 and lectures for all liberal groups on Western Togoland as Exhibit E10. Page 20 of 29 PW2 continued to testify that in the course of investigations, one, George Nyarko, Public Relations Officer (PRO) of the HSGF was arrested in Ho and some documents which links A5 to the HSGF were found in George Nyarko’s room. He added that George Nyarko informed the police that A5 is the immediate past Chairman of HSGF, Ho Chapter. PW2 sought to tender documents found in George Nyarko’s room and labeled as EG4 and EG5, these documents were rejected and marked as R1 and R2. The tendering of the Cautioned Statements of the Accused persons, A1, A3 and A4 were met with objections which necessitated the conduct of a mini trial. Per a ruling dated 17th may 2023 the objection against the tendering of the Investigation and charged statements of A1 were overruled. Meanwhile the objection against the tendering of the cautioned statement of the A3 was sustained PW2 tendered into evidence without objection, the Investigation Cautioned Statements and Charged Cautioned Statements as follows: A2 – Investigation Cautioned Statement dated 13th November 2020 as Exhibit F A5 – Investigation Cautioned Statement dated 7th October 2020 as Exhibit G, Further Investigation Cautioned Statement dated 26th November 2020 as Exhibit G1 A6 – Investigation Cautioned Statement dated 5th October 2020 as Exhibit H A2 – Charged Cautioned Statement dated 2nd July 2021 as Exhibit J A3 – Charged Cautioned Statement dated 1st July 2021 as Exhibit K A5 – Charged Cautioned Statement of dated 1st July 2021 as Exhibit L Page 21 of 29 A6 – Charged Cautioned Statement dated 1st July 2021 as Exhibit M A4 – Investigation Cautioned Statement dated 9th September 2020 as Exhibit Q A4 – Charged Cautioned Statement dated 1st July 2021 as Exhibit Q1. After Mini Trial A3 – Investigation Cautioned Statement dated 9th October 2020 was rejected and marked as R4 A1 – Investigation Cautioned Statement dated 7th October 2020 as Exhibit S A1

– Charged Cautioned Statement dated 1st July 2021 as Exhibit S1 PW2 in his evidence sought to tender a soft copy of Exhibit A This was rejected was rejected and marked as Exhibit R3. The soft copy picture portraying the A3 with members of the WTRF on pendrive was tendered and marked as Exhibit P. Under cross examination of PW2 by counsel for A6 confirmed that the investigative team did not find any evidence of the involvement of A6 in the police station disturbances, but found evidence that A6 is a member of HSGF and participated in some of their activities in Ho. PW2 further confirmed that A6 had been at HSGF meetings at Ho and also A6 was added to HSGF WhatsApp platform titled “Concerned Citizens of Western Togoland”. Under cross examination of PW2 by counsel for A2, he said that A2 was added to a WhatsApp platform called “SEC ADMINS” based on being a member of WTRF and that aside A2 being added to the WhatsApp platform. His evidence corroborated that Page 22 of 29 of the PW1, the police did not have any other evidence against A2. PW2 added in response that A2 did not join the WhatsApp group by himself but did give his consent. That investigation established that the “SEC ADMINS” is the Apex of all the WhatsApp groups of WTRF because members are carefully selected. Under cross examination of PW2 by counsel for A1, A3, A4 and A5, PW2 confirmed that A5 and A6 were arrested in Ho and a diary which had Western Togoland contents were retrieved from the room of A5 but disagreed that A5 has been arraigned before this Court of his involvement in the activities of HSGF between the period of 2018 and

2020. PW2 mentioned under cross examination that investigations through a forensic examination on A5’s phone revealed that A5 created a WhatsApp group with the name Concerned Citizens of WTL. On A1, PW2 responded under cross examination that A1 is connected to the charge because of the roles he played within the group between the 2018 to 2020 and not as a result of any membership card obtained from him. PW2 further added that apart from the Western Togoland branded T-shirt that was retrieved from A3, no other information or evidence was found connecting A3 to the prohibited organization. PW2 agreed to a question from counsel for A4 that apart from A4’s own statement that states that the leadership role was imposed on A4 by some strangers who visited Volo in 2018 to talk to them about Western Togoland, there is no other evidence that connects A4 to the charges. Page 23 of 29 THE ESTABLISHMENT OF THE ELEMENTS OF THE OFFENCES
1. BEING A MEMBER OF A PROHIBITED ORGANISATION. From the aforementioned, and the entirety of the evidence of the prosecution witnesses, it has been established prima facie that Homeland Study Group Foundation (HSGF) and the Western Togoland Restoration Front are/ were prohibited organizations by virtue of their objectives and purpose. This proof is evidenced by Exhibits B, E, E4, E9 and E10 on Homeland Study Group Foundation (HSGF) and Exhibits B and E5 on Western Togoland Restoration Front. It was however not established by evidence that the Youth Alive Artisans Association in Ho was a prohibited organisation. On A1, having established that these organizations are prohibited, the Prosecution has been able to establish the offence of being a member of a prohibited organization prima facie against A1. Per the charge sheet, count one (1), A1 was said to be a member of the HSGF between 2018 and 2020. In Exhibit S dated 7th October 2020, his

investigation cautioned statement, A1 stated therein that he was a member of this group until about two (2) years prior to giving his statement and that period will fall between 2018 and 2020. From his own admission therefore and with Exhibit S tendered against him, there is proof that he was a member of HSGF for the period stated in the Charged sheet. Page 24 of 29 On A2, insufficient evidence was led by the Prosecution to support the fact that he was a member of any of any of the Prohibited Organizations. Evidence that he was put on a WhatsApp platform by somebody without him having actively engaged in any of the activities or contributed to same. Both PW1 and PW2 confirmed that they had no evidence of his involvement with any of the organization except being allegedly on that platform. No evidence was led that he listened to, joined, supported or in any way contributed to the success of this WhatsApp group as a member. The element of membership has not been established. On A3, Exhibit B, the Western Togoland T-shirt found in his room as well as Exhibit A, the photograph is evidence of his association with leadership of the said groups which constitutes evidence of membership. The offence of membership of a prohibited organization has therefore been prima facie established against him On A4, his own statement, Exhibits Q and Q1 in which he confirmed his association with the HSGF is evidence prima facie, of his membership of a prohibited organization. On A5, Exhibits C, D, E1-E10 tendered as having been found in his possession proves the element of membership of the HSGF. Evidence of his association with leadership of the HSGF as well as his direct role and involvement as an executive of the HSGF has prima facie been established with the numerous exhibits tendered against him by the PW2. Page 25 of 29 On A6, not sufficient evidence was led to establish that A6 was a member of any of the prohibited groups. There is no incriminating information volunteered by him in any of his statements. The only evidence is his being a member of the Youth Alive Artisans group. Apart from the founder of the HSGF visiting their youth group and distributing T-shirts, there is no evidence that he directly and or purposefully supported or contributed nor was associated with any leader of the said two (2) prohibited groups. The evidence led so far is that even the T-shirt of the WTRF distributed to him he discarded it. I have found that merely being gifted something i.e. the T-shirt by the leader of the organization is not enough to make one a member of that organization. Without any subsequent acts or association with the group, its activities, regalia or paraphernalia, there cannot be sufficient evidence of membership. The charge of being a member of a prohibited organization has therefore not been proved against A6. On the charge of being a member of a prohibited organization therefore, A2 is acquitted and discharged on count four (4). A6 is also acquitted and discharged on count nine (9). Meanwhile A1, A3, A4 and A5 are to open their defences on this charge.

2. ATTENDING MEETINGS OF A PROHIBITED ORGANIZATION On the charge of Attending Meetings of a Prohibited Organization, A1 was charged under count two (2) for this offence having said to have attended meetings of HSGF Page 26 of 29 between 2018 and 2020. However, no evidence was led to prove that he was either physically or virtually present at any such meetings of the HSGF, Again, no evidence was led to support the fact that he attended meetings by way of listening, speaking, voting, contributing etc. to the activities of

HSGF within the specific period of 2018 to 2020. From the evidence of PW1, A1 stopped attending meetings of the HSGF in 2015. He is therefore acquitted and discharged on count two (2) On A3, he was charged with Attending meetings of WTRF between 2018 and 2020. Again, no evidence was led to support his physical or virtual presence at any meeting or his engagement by way of listening, speaking, voting, contributing etc. to the activities of HSGF within the specific period of 2018 to 2020. His Investigation Cautioned Statement has also been rejected as Exhibit R4. He is therefore acquitted and discharged on count five (5) All two (2) Accused charged with this offence are therefore acquitted on this count

3. PARTICIPATING IN THE CAMPAIGN OF A PROHIBITED ORGANIZATION On the charge of participating in a campaign of a prohibited organization only A1 was charged under count three (3) for having participated in the activities of HSGF in 2019. Evidence so far led per the evidence of PW1 as well as his own Cautioned Statement Page 27 of 29 indicates that he left the group within a period of about two (2) years before 2020 when he gave his statement. No evidence has also been led specifically that in 2019 he attended such meetings by participation, or that he actively supported, contributed, raised awareness, funds or resources to support the campaign of HSGF within the year 2019 as charged. In the circumstance, A1 is acquitted and discharged under count three (3). In totality, having established prima facie, the offence of being a member of a prohibited organization, A1, A3, A4 and A5 are to open their defenses if they wish, bearing in mind the definition of prima facie evidence as stated in of KWABENA AMANING ALIAS TAGOR AND ANOR VS. THE REPUBLIC quoted supra as: “Evidence that can lead to the conviction of the Accused if he leads no evidence to rebut the presumption of guilt raised by the Prosecution”. (SGD) JUSTICE MARIE-LOUISE SIMMONS (MRS) (JUSTICE OF THE HIGH COURT) COUNSEL: FREDERICK ADU-GYAMFI (SA) FOR THE REPUBLIC PRESENT. RICHARD ASARE BAFFOUR HOLDING THE BRIEF OF GEORGE ASAMANEY FOR 1ST, 3RD, 4TH AND 5TH ACCUSED PERSONS PRESENT. DENIS WEDAM PWABERI HOLDING THE BRIEF OF MARTIN KPEBU FOR THE 2ND ACCUSED PERSON PRESENT. Page 28 of 29 BENJAMIN ZIGORSH-NYAKPENU FOR THE 6TH ACCUSED PERSON ABSENT. Page 29 of 29

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