IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2021

CORAM: YEBOAH CJ (PRESIDING)
PWAMANG JSC
AMEGATCHER JSC
TORKORNOO (MRS.) JSC
KULENDI JSC

CRIMINAL APPEAL
NO. J3/02/2020

8TH DECEMBER, 2021

FRANCIS ARTHUR ..... APPELLANT

VRS

THE REPUBLIC ..... RESPONDENT

JUDGMENT

AMEGATCHER JSC:-

This is an appeal from the judgment of the Court of Appeal dated 21st February 2018. That judgment affirmed the appellant's conviction and sentence to 10 years I.H.L for the offence of stealing contrary to section 124(1) of the Criminal Offences Act, 1960 (Act 29).

The facts culminating in this appeal are amply captured by the decision of the Court of Appeal. However, we will reiterate them in our own words as follows.

Francis Arthur, the appellant, was the Customer Service Manager of Ecobank Ghana Limited at its Takoradi Main Harbour Branch. Sometime in June 2013, an investigative team of Ecobank Limited ("the Bank") arrived at Takoradi from the head office in Accra, particularly tothe appellant's branch to conduct a routine training. While there, Ebenezer Lartey, a member of the team who is the head of the Security and Investigation Department of the Bank (**the complainant and PW1**) spotted a Porsche Cayenne vehicle parked at the branch. His curiosity drove him to make inquiries regarding the ownership of the vehicle. His enquiries ultimately led to the identification of the appellant as the owner of the vehicle.

Following this, the branch manager (**PW2**), who was uncomfortable with some irregular transaction on the branch's computer, drew PW1's attention to it. As events would have it, further probing revealed that the appellant was responsible for the irregular transaction. The appellant was, therefore, confronted with this discovery. He admitted to wrongdoing, sat before the computer and within a short time tabulated some wrongful transactions which facilitated his withdrawal of sums of money amounting to GHS 1,342,000.00, for his personal use.

Appellant then recounted his use of this amount, which comprised his purchase of two Mitsubishi Pajero vehicles, a Porsche Cayenne vehicle, a Toyota Hilux Pick-up vehicle, an uncompleted four flats, two apartment buildings at Nkroful and a two-bedroom house as Apowa, all within the environs of Takoradi. Additionally, GHS 400,000.00 of this amount had been deposited by the appellant in Treasury Bill investments at the Takoradi Branch of Zenith Bank.

In a bid to return the Bank's money, the appellant led the way to retrieve the GHS 400,000.00 investment at the Takoradi Branch of Zenith Bank, through a Power of Attorney, which he executed in the name of the Bank. Further, the appellant led the way to the landed properties.

On the team's return to the Bank's head office at Accra, the appellant was handed over to the police. At the Criminal Investigations Department (CID) of the Ghana Police Service on 10thJune 2013, appellant gave an investigation cautioned statement witnessed by an independent witness and among other things admitted to stealing GHS 1,342,000.00. Subsequently on 28th June 2013, in the presence of the same independent witness, appellant in another investigation cautioned statement admitted to stealing an enhanced amount of GHS 1,701,217.45.

After investigations, appellant was arraigned before the High Court, Accra on the charges of stealing and forgery of other documents. At the end of the evidence, the High Court on 17th November 2017 convicted the appellant on both counts and sentenced him to ten years IHL on the stealing charge and two years IHL on the forgery charge to run concurrently. The appellant was naturally dissatisfied with his conviction. He appealed to the Court of Appeal, which upheld the conviction for the offence of stealing but allowed the appeal in respect of the offence of forgery of other documents. It is from this judgment which prompted the appellant to appeal to the Supreme Court on the following grounds:

a. The Court below erred in law when it upheld the findings of the High Court to the effect that the offence of stealing upon which the appellant was convicted was proven.

b. The Court below erred in law when it disregarded the need to tender as evidence the bank statement of the walk-in Account as proof of the exact amount stolen as alleged by the prosecution.

c. The Court below erred in law when it upheld the findings of the High Court to the effect that the confession of the appellant in his caution statement was sufficient evidence of the admission of the offence of stealing.

d. The Judgment of the Court below amounted to gross miscarriage of justice.

The gravamen of this appeal rest on the outcome of the admissibility and weight to be attached to the confession authored by the appellant to the police. As such we would address ground C first before proceeding with the other grounds.

GROUND C

This ground states that the court below erred in law when it upheld the findings of the High Court to the effect that the confession of the appellant in his caution statement was sufficient evidence of the admission of the offence of stealing.

Arguing this ground, counsel for appellant submits in his statement of case that the Court of Appeal after concluding that the confession statement of the appellant was made voluntarily also found that it constituted sufficient evidence of the offence of stealing. Counsel for the appellant bemoans the prosecution's heavy reliance on the appellant's cautioned statements (**EXHIBITS CC** and **DD**) and argues that there necessarily should be evidence on record to corroborate the statement of the accused.

ADMISSIBILITY OF THE CAUTIONED STATEMENTS

Akamba JSC, in the case of **Ekow Russell vs. The Republic [2017-2020] SCGLR 469** defines a confession statement as follows:

> **"A confession is an acknowledgment in express words, by the accused in a criminal charge, of the truth of the main fact charged or of some essential part of it. By its nature, such statement if voluntarily given by an accused person himself, offers the most reliable piece of evidence upon which to convict the accused. It is for this reason that safeguards have been put in place to ensure that what is given as a confession is voluntary and of the accused person's own free will without any fear, intimidation, coercion, promises or favours."**

Appellant's cautioned statements dated10thand 28th June 2013, which turned out to be confession statements are governed by Section 120 of the Evidence Act, 1975 (NRCD

323). Applying Akamba's dictum (supra) and the Evidence Act to the facts of this case, the basic point of the admissibility of a confession statement is the question of voluntariness. As confession statements, therefore, the cautioned statements are not admissible unless they were made voluntarily and in the presence of an independent witness. These requirements shall not be belabored except that it is important to stress on the requirement of voluntariness.

In determining what a 'voluntary statement' is, Taylor J in **Republic V Kokomba** opined as follows:

> **"In my view, in ordinary parlance, 'voluntary statement' means a statement offered by a person on his own, freely, willingly, intentionally, knowingly and without any interference from any person or circumstance. If a person of unsound mind makes a statement, it is not voluntary, due to the interference induced by insanity; if short of insanity, a person makes a statement not because he wishes to make it but because of circumstances however induced, it will not be voluntary because of the interfering circumstances. If a statement is induced by threats and violence, it cannot be said to have been made without interference from any person and so it is not voluntary. If a statement is induced by promises, then it is not offered by the person of his own and it is accordingly not voluntary".**

The burden lies on the prosecution to prove that the confession statement made was voluntary. In other words, the prosecution must prove that there was no inducement by threat or duress, or promise held out to the accused by a person in authority. It is noteworthy that even though the appellant challenged the voluntary nature of his cautioned statements of 10th and 28th June 2013, a mini trial conducted by the learned trial Judge upheld the prosecution's case that the cautioned statements were voluntarily given and witnessed by one Seth Nyarko, an independent witness as required by and under section 120 of NRCD 323.

This fact was acknowledged by their Lordships of the Court of Appeal, who considered the evidence that was led regarding the circumstances of the taking of the two cautioned statements. In coming to that conclusion, the Court of Appeal considered all the evidence led collectively by the prosecution which consisted of the testimony of the police investigator (**PW5**) and the independent witness, Seth Nyarko as well as the appellant's own version of events. Applying the provisions of Section 120 of NRCD 323 to the evidence adduced the Court of Appeal came to the conclusion that the statements written by the appellant in his own handwriting were voluntarily given and being confession statements, were admissible and had probative value. In our opinion, that conclusion is supported by the evidence adduced at the trial and the law. We do not find any basis to disturb it.

Indeed the Court of Appeal rubbished the appellant's contention that confession statements may not be used alone in the conviction of an accused person. It stated categorically at page 692 of the Record of Appeal that:

> **"We must be quick to add though that in spite of the plethora of authority in support of the desirability of evidence corroborating matters stated in a confession statement, in our view, that is not to say that in all cases, voluntary statements found to have been voluntarily made ought not to be relied on unless there was such corroborative evidence."**

The position of the law regarding a conviction based solely on the evidence of a confession by an accused person was stated by the Supreme Court in a Practice Note in the case of **State v Aholo [1961] GLR 626** where Van Lare JSC citing with approval the cases of **R. v. Omokaro (1941) 7 W.A.C.A. 146**, which also cites the case of **R. v. Walter Sykes (1913) 8 Cr. App. R. 233** directed as follows:

"**A conviction can quite properly be based entirely on the evidence of a confession by a prisoner, and such evidence is sufficient as long as the trial judge, as in this case, enquired most carefully into the circumstances in**

which the alleged confession was made and was satisfied of its genuineness."

See also the subsequent Supreme Court decision in the case of **State v. Otchere & Ors [1963] 2 GLR 463** where the Court per Korsah CJ emphatically stated that a confession made by an accused person in respect of a crime for which he is being tried is admissible against him provided it is shown by the prosecution that it was made voluntarily and that the accused was not induced to make it by any promise or favour, or menaces, or undue terror. The Court then concluded that a confession made by an accused person of the commission of a crime is sufficient to sustain a conviction without any independent proof of the offence having been committed by the accused.

We are, therefore, clear in our minds that the criminal jurisprudence of this court leans towards the conviction of an accused person based on a voluntary confession to the commission of the crime charged. However, we are aware that in the peculiar facts of some cases where the only evidence available to convict was the confession statement, the courts decried the unreliability and indeed set aside a conviction solely on the confession without some other corroborative evidence that the crime was committed and by the accused person. Those cases form the exception rather than the rule. For example, in confession in murder and manslaughter cases, the courts have held that where the statement does not establish the corpus delicti, **ie the concrete and essential facts which, taken together will prove that the crime has been committed**, it would require some additional evidence in the form of corroborative evidence to demonstrate that the matters admitted did occur. Where the confession establishes the corpus delicti, the confession is sufficient to sustain a conviction. This was the position taken by the court in the Otchere case (supra) at holding 8 where the Court said:

"The principle regarding a confession of murder (or manslaughter) is that where the confession is direct and positive, that is, where the confession establishes the corpus delicti, the confession is sufficient to sustain a conviction. But where the confession falls short of establishing the corpus

delicti then further corroborating evidence is required to prove the corpus delicti. This principle does not apply to confessions of treasonable acts even though the penalty for the offence of treason, like murder, is death.

See also the High Court case of the **State v. Owusu & Anor[1967] GLR 114**where Baidoo J held that:

> **"An extra-judicial confession by an accused that a crime had been committed by him did not necessarily absolve the prosecution of its duty to establish that a crime had actually been committed by the accused. It was desirable to have, outside the confession, some evidence, be it slight, of circumstances which made it probable that the confession was true. From the evidence adduced in the instant case, there was sufficient corroboration which confirmed that the confession of each accused was true."**

What, then constitutes corroboration in cases where the confession falls short of establishing the corpus delicti? Section 7(1) of NRCD 323 defines corroboration to consist of evidence from which a reasonable inference can be drawn which confirms in some material particular the evidence to be corroborated and connects the relevant person with the crime, claim or defence. In essence, the corroborating evidence strengthens the initial evidence, which standing alone is insufficient to determine the commission of acrime. Retired Supreme Court judge and legal text writer Stephen Alan Brobbey writes in **ESSENTIALS OF THE GHANA LAW OF EVIDENCE, First Ed. 2014**at page 85 that this definition connotes three concepts; firstly, for the evidence to amount to corroboration, it must have some connection or relationship with the previous evidence. Secondly, that connection should amount to affirmation or denial of some relevant part of the previous evidence. Thirdly, the connection and affirmation should directly be referable or attributable to the person or fact in so far as the crime, claim or defence is concerned. If these three concepts exist, the court may conclude that the second evidence confirms, supports, or "corroborates" the first evidence.

Reviewing the evidence in this case, can one say that the Court of Appeal was right when it affirmed the decision of the trial court which relied on the cautioned statements of the appellant to support the charge of stealing? We pose this question because the submissions of appellant would have the Supreme Court believe that aside the confession statements, there were no other pieces of evidence on record to support a conviction. That assertion, in our opinion, is wholly erroneous and unsupportable because at page 692 of the Record of Appeal the Court of Appeal stated that:

> **"Happily, in the instant matter, <u>there is sufficient corroborative evidence</u> to support the matter stated in the appellant's confession statement".**

Indeed, having made this observation, pages 693 to 702 of the Record of Appeal identifies quite clearly other pieces of evidence which drove the Court of Appeal to the conclusion that there was sufficient corroborative evidence to support the confession statement even if the argument were to hold that the confession statement in this case was insufficient to sustain a conviction. Having considered all that corroborative evidence, the Court of Appeal accordingly concluded at page 695 of the Record of Appeal as follows:

> **"In our Judgment, the prosecution led evidence that sufficiently corroborated the matters stated by the Appellant in the confession statements".**

WHAT WAS THE SUFFICIENT CORROBORATING EVIDENCE?

Aima Abena Aboagye (**PW3**) testified at pages 158 to 161 of the Record of Appeal that she was given a memo by the appellant, which memo indicated a conversation between him and Tabitha Mensah, with an instruction to move monies from the GC Net account into the Bank's Walk-in Account in respect of monies to be paid to one Kwaku Sekyei Aidoo to whom appellant mistakenly gave the GC Net account. Further, it was her testimony that she was given a memo by the accused which indicated a credit into the Bank's Walk-in Account, which appellant needed to pay to Goodwin Shirley (**PW4**).

These were confirmed by **EXHIBITS D** and **E.** PW3's testimony was uncontroverted during cross examination. The testimony elicited by counsel for the appellant appears as follows at page 162 to 163 of the Record of Appeal:

Q: Aima you indicated to this court in your examination in chief that the accused person herein authorizes you to make payment directed to him. Do you maintain it?

A: Yes my lord

Q: Is that the practice?

A: <u>Sometimes</u> my lord

Q: And was the payment authorise *[sic]?*

A: Yes my lord.

Q: **Is he the only person who was supposed to authorise the payment?**

A: **No, my lord**

Q: But you went ahead to make the payment?

A: Yes my lord.

Q: You have told this court that he is not the only one who should have authorised, is that not so?

A: Yes my lord.

Q: So,it's fair to put to you then that the payment was improper was not regular?

A: **No, my lord.**

To put the above elicited testimony in clearer terms, the evidence of PW3 indicates the practice where **sometimes** the appellant authorizes the payment of monies. This

practice continued even though appellant is not the only individual supposed to authorise such payments.

Again, the following elicited testimony is crucial because in our opinion it goes to explain why the appellant alone authorized those payments even though he was not the only authorized signatory in the branch. At page 166of the Record of Appeal, the examination continues as follows:

Q: Now were you ever invited to be interview *[sic*] on this very transaction you are testify *[sic]*on today, were you ever?

A: Yes my lord at our disciplinary committee.

Q: And what was enquire *[sic]*from you?

A: My lord I was asked why we pay the money directly to the accused and why we couldn't call to verify whether a cash payment was supposed to be made or not.

Q: If you say you were ask *[sic]*why you couldn't call to verify, whom were you to call to make this call to?

A: My lord it was after the issue that we realised that we could have called the internal control to find out but my lord because the project was already ongoing there was no way you could doubt this transaction.

Q: No,I am asking so you should have called the internal control?

A: Yes my lord.

Q: Before payment?

A: No, my lord.

Q: Whom were you suppose *[sic]*to seek confirmation of this transaction from as paid?

A: My lord as at the time accused was next to the branch manager and I take instruction directly from him. So, whatever he being and am working on and I know that, and this transaction was even authorised by him so that any point.

After being corrected by the trial court to provide clarity PW3 answered in clear language as follows.

A: My lord I said the accused authorise the transaction and he was our direct supervisor as if the branch manager wasn't there accused was running the branch. So as this time the branch manager wasn't around, and we all saw this project going on so you couldn't doubt the transaction.

Godwin K. Shirley (**PW4**) testified at pages 180 to 181 of the Record of Appeal thatfor the ten (10) years that he has worked with the Bank, all payments made to him in respect of his work are electronic and made through his account with the Bank. Indeed, he was emphatic that never has he received cash payment for work done for the Bank. When presented **EXHIBIT A** which were some cash payments purportedly made to him, he denied knowledge about them.

As noted by the Court of Appeal at page 698 of the Record of Appeal, it was the un assailed evidence of PW3 and PW4 that succeeded in showing that the appellant had by use of internal memos appropriated monies in the said Walk-in Account intended for use in the construction of the new building. The Court of Appeal concluded at page 699 of the Record of Appeal as follows:

"In our Judgment, in so far as there was evidence of dishonest appropriation of monies not belonging to the appellant, in whatever sum, the learned trial judge was not in error in convicting the appellant of the crime of stealing. Nor would the fact that the corroborating evidence (PW3 and PW4's) was in respect of a sum of money much less

than what he was charged with, affect a conviction for the offence in respect of which the appellant made a voluntary confession".

Despite these pieces of evidence on record, the appellant remains convinced that there was no corroborative evidence to support the Court of Appeal's decision. We do not blame him because at the trial court and the Court of Appeal he held on fastidiously to the thin thread of failure by the prosecution to produce statements of the Walk-in Account. In our opinion that stand taken by the appellant was a "much ado about nothing" when weighed against other pieces of evidence adduced at the trial. There were clear evidence of a confirmatory nature outside the confession statement which is consistent with other facts which have been ascertained to warrant a conviction. On this basis, this ground of appeal ought to fail and is accordingly dismissed.

GROUNDS A B &D:

This conclusion leads us to the consideration of Grounds A, B and D. They read as follows:

A. **The Court below erred in law when it upheld the findings of the High Court to the effect that the offence of Stealing upon which the appellant was convicted was proven.**

B. **The Court below erred in law when it disregarded the need to tender as evidence the bank statement of the Walk-in account as proof of the exact amount stolen as alleged by the Prosecution.**

C.

D. **The Judgment of the Court below amounted to gross miscarriage of justice.**

It is a cardinal principle of law that the statute creating and defining an offence, determines the ingredients of the offence which are to be proved. In this respect, the Criminal Offences Act, 1960 (Act 29) defines the offence of stealing at Section 125 as follows:

> **"Section 125—Definition of Stealing.**
>
> **A person steals if he dishonestly appropriates a thing of which he is not the owner."**

The ingredients of the offence of stealing are expounded in a number of cases. One case that comes to mind readily is **Ampah v. The Republic [1977] 2 GLR 171**, where the Court of Appeal then sitting as the Apex Court of the land stated in holding 2 as follows:

> **"To establish the offence of stealing as defined by section 125 of Act 29, the prosecution was required to prove the following three elements: (i) dishonesty, (ii) appropriation, and (iii) property belonging to another person."**

These ingredients would be highlighted briefly against the backdrop of the evidence adduced at the trial and decided cases of the courts.

On the ingredient of ownership, Section 123 of Act 29 states that the offence of stealing, and robbery can be committed in respect of a thing living or dead, valuable or of no value. **It is unnecessary to prove the ownership or value of the thing**. Thus, in the criminal case of **R V HALM [1969] CC 155**it was held that a charge of stealing is not founded on a relationship between the accused and an identified owner of the thing allegedly stolen, but rather on the relationship between the accused and the thing alleged to have been stolen.

Appropriation as a critical ingredient of the offence of stealing is defined by Section 122(2) of Act 29 as 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 judicial support for this is the case **ANING v. THE REPUBLIC [1984-86] 2 GLR 85**where it was held as that:

> **"If counsel is right, then no one can be convicted of stealing property of the Ghana contingent if he is found with the goods in its area of operations. The truth of the matter, however, is that even in those jurisdictions where a "carrying away" is an essential part of the offence of larceny it has been held that a bare removal from the place in which the thief found the goods, though he does not make off with them, is sufficient."**

With respect to the ingredient of dishonesty, Section 120(1)stipulates thatan appropriation of a thing is dishonest if it is made with an intent to defraud or if it is made by a person without claim of right and with a knowledge or belief that the appropriation is without the consent of 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. In **AMPAH v THE REPUBLIC [SUPRA]** it was held that:

> **"The failure to call an identified owner to give evidence of his lack of consent was not necessarily fatal on a charge of stealing. The crucial issue was whether the appropriation was dishonest which depended on the state of mind of the person doing the act amounting to appropriation. Whether an accused person had a particular state of mind was essentially a question of fact which had to be decided by the trial court. The facts disclosed in this case were entirely inconsistent with the conduct of an owner who would consent to the appropriation of his property. The facts, on the contrary, showed in no uncertain terms that if the Chamber had known of the appropriation by the appellant it would have protested."**

From the foregoing, proving the exactness of the amount alleged to be appropriated is not a prerequisite to establishing the offence of stealing as appellant submits. This is exactly what appellant's much sought after Bank statement of the Walk-in Account would establish. However as discussed in Ground C above, in the light of other wholly sufficient evidence, the Bank statement which were not turned in evidence at the trial are inconsequential.

Consequently, if the evidence establishes that the appellant has appropriated one pesewa when the particulars of the charge preferred against him for stealing states an amount many times bigger and vice versa, he would still be deemed to have committed the offence of stealing. This was categorically stated by the Court of Appeal after it reviewed the testimonies of PW3 and PW4 which demonstrated how the appellant using internal memos was able to move monies into the Bank's Walk-in Account intended for the use in the construction of a new building. At pages 698-699 the Court of Appeal noted in the following words:

> "Thus, while the evidence of dishonest appropriation corroborative of the confession statement exhibit CC was far less than what was admitted, in so far as the appellant in his confession statement (which is part of the prosecution's case on record) admitted to taking the enhanced sum of GHC 1,701,217.45, the learned trial judge was not in error to hold thus.
>
> Nor was he in error when he held that the appellant was guilty of stealing, even in the absence of a bank statement of the account the appellant allegedly withdrew the money from.
>
> **In this regard, we cannot help but state that it was unfortunate indeed that the prosecution failed to tender audited accounts of the bank to prove its loss, or even, a statement of the Walk-in account to show the withdrawals in the sum charged**. Whether this lapse was due to less-than diligent work by the investigating officer of PW5, or simply because (as PW1

labored to point out), the transactions by which the appellant in his own words, took money out of the Bank's internal account were so cleverly covered by source documents (emails and memos), that they appeared to be correct, is not a circumstance we shall concern ourselves with.

In our judgment, in so far as there was evidence of dishonest appropriation of monies not belonging to the appellant, in whatever sum, the learned trial judge was not in error in convicting the appellant of the crime of stealing. Nor would the fact that the corroborating evidence (PW3 and PW4's) was in respect of a sum of money much less than what he was charged with affect a conviction for the offence in respect of which the appellant made a voluntary confession"

"**It was the unassailed evidence of PW3 and PW4 that succeeded in showing that the Appellant had by use of internal memos appropriated monies in the said walk-in account intended for the use of the construction of the new building. By the said evidence of PW3, the Appellant succeeded in appropriating a total of GHS 155,000 monies he allegedly withdrew on the pretext of paying same to PW4**."

From the foregoing, it is our humble opinion that grounds A, B and D also ought to fail and are, accordingly, dismissed.

CONCLUSION:

It is a hackneyed rule in criminal proceedings that the duty on the prosecution is to prove the allegations against the appellant beyond all reasonable doubt. The prosecution has a duty to produce sufficient evidence and prove the essential ingredients of the offence with which the appellant has been charged with that degree of persuasion such as to convince the court to make a determination in its favour. It is clear from the testimony of the witnesses called and the evidence on the record that the prosecution has led that relevant evidence and satisfied the standard of proof that is required of it in a criminal case.

Section 124 of Act 29 prescribes the offence of stealing as a second-degree felony. However, it is important to note that stealing although prescribed as a second-degree felony is not in the same category as all other second-degree felonies. In fact, it belongs to a class whose sentence is specifically provided for under Section 296(5) of the Criminal and Other Offences (Procedure) Act, 1960 (ACT 30). It states as follows.

> **"A person convicted of a criminal offence under any of the following sections of the Criminal Offence Act, 1960 (Act 29) that is to say, sections 124, 128, 131, 138, 145, 151, 152, 154, 158, 165, 239, 252, 253 and 260 is liable to a term of imprisonment not exceeding twenty-five years".**

As a second-degree felony of special class, therefore, it is a grave offence. The sentence to be passed can, therefore, be any number of years not exceeding 25 years, if deemed by this Honourable Court to be suitable and appropriate under the circumstances. The principles upon which sentences are imposed have been stated in the case of **KWASHIE V THE REPUBLIC [1971] 1 GLR 488**at ***493*** where it was stated that:

> **"In determining the length of sentence, the factors which the trial Judge is entitled to consider are:**
>
> ***i.*** **The intrinsic seriousness of the offence.**
>
> ***ii.*** **The degree of revulsion felt by law abiding citizens of the society for the particular crime.**
>
> *iii.* **The premeditation with which the criminal plan was executed.**
>
> *iv.* **The prevalence of the crime within the particular locality where the offence took place, or in the country generally.**
>
> ***v.*** **The sudden increase in the incidents of the particular crime*.***

vi. **Mitigating or aggravating circumstances such as extreme youth, good character and the violent manner in which the offence was committed."**

Coming closely on the heels of the **KWASHIE V THE REPUBLIC** [supra], is the case of **THE REPUBLIC V ADU-BOAHEN, [1972] GLR 70-78** where the court stated that:

> **"Where the court finds an offence to be grave, it must not only impose a punitive sentence, but also a deterrent or exemplary one so as to indicate the disapproval of society of that offence. Once the court decides to impose a deterrent sentence the good record of the accused is irrelevant."**

The Supreme Court as well in the case of **Kamil V Republic [2011] 1 SCGLR 300**per Ansah JSC posited at 315-316 as follows:

> **"Where an appellant complains about the harshness of a sentence he ought to appreciate that every sentence is supposed to serve a five-fold purpose, namely to be punitive, calculated to deter others, to reform the offender, to appease the society and to be a safeguard to this country considering the sentence of 20 years which was passed on the appellants …, and considering also the principles on sentencing enunciated in the case of Hodgson v The Republic [2009] SCGLR 642, this court held on the said sentence as follows:"- Considering all this we find no good reason to disturb the sentence on the appellant by the Court of Appeal, and think it was even on the low side and should have been increased."**

We find the appellant, from all indications, quite unrepentant. A complete perusal of the Record of Appeal demonstrates his resolve to deny his actions by and through any means. Using all the factors and principles enunciated in the above cases, it is our opinion that this Court will be justified in imposing a higher sentence than that of the

trial court. From the appellant's actions, there is no doubt that granted another opportunity, he would wind back into his old ways. We have had serious reflections on all the circumstances of this case and weighed all the mitigating circumstances. We see the need to impose a deterrent sentence in financial crime cases currently on the rise and we almost came to the decision to alter the sentence by enhancing it. Our hands were stayed by the fact that we have not invited the parties to address us and show cause for or against imposing an enhanced sentence in accordance with the audi alteram partem rule. Besides, the prosecution has not complained about the inadequacy of the sentence-see Azu Crabbe JA (as he then was) dictum in **Odonkor v The Republic [1967] GLR 690**. In sum we have decided not to interfere with the sentence of ten years imposed by the trial court and affirmed by the Court of Appeal. The appeal, therefore, fails and is accordingly dismissed.

N. A. AMEGATCHER
(JUSTICE OF THE SUPREME COURT)

ANIN YEBOAH
(CHIEF JUSTICE)

G. PWAMANG
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