IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA-AD 2020

CORAM: DOTSE, JSC (PRESIDING)
GBADEGBE, JSC
PWAMANG, JSC
DORDZIE (MRS), JSC
KOTEY, JSC

CRIMINAL APPEAL
NO. J3/07/2019

19TH FEBRUARY, 2020

JOHN COBBINA ..... APPELLANT/APPELLANT

VRS

THE REPUBLIC ..... RESPONDENT/RESPONDENT

JUDGMENT

DORDZIE (MRS.) JSC:-

FACTS: The appellant in this court, John Cobbina, was the 1st accused at the trial court. Until his arrest and subsequent trial, he was employed by J Adom Ltd. as an accounts officer and was responsible for most of the company's daily accounting transactions including payment of staff, most of whom were wage earners at the company's contraction sites and quarry at Nsenmere. At a point in time, the management of J Adom Ltd. noticed huge loses in the company's accounts it therefore engaged an audit firm E.

Osei & Associates to audit the company's accounts. The findings made by the auditors led to a complaint to the police and the arrest of the appellant and other employees of J Adom Ltd. After investigations the appellant and one Eugene Amoako-Mensah of Zenith bank, Sunyani branch, who acted as the relationship officer for the company in the said bank, were charged with various offences. The details of the charges as disclosed in the charge sheet are stated below:

Count One

Statement of Offence

Conspiracy to commit crime; namely; stealing: contrary to 23(1) and s. 124(1) of the Criminal offences Act, 1960 (Act 29/60)

Particulars of Offence

1. John Cobbina and 2. Eugene Amoako-Mensah: During the years, 2011 and 2012 at Sunyani in the Brong Ahafo Region did act together with a common purpose to commit crime, namely stealing.

Count Two

Statement of Offence

Conspiracy to commit crime; namely; money laundering: Contrary to 23(1) and S 3 of the Anti-Money Laundering Act, 2008 (Act 749)

Particulars of Offence

1. John Cobbina and 2. Eugene Amoako-Mensah: During the years 2011 and 2012, at Sunyani in the Brong Ahafo Region did act together with a common purpose to commit crime, namely money laundering

Count Three

Statement of Offence

Abetment of crime, namely; stealing: Contrary to s. 20(1) and s.124 (1) of the Criminal Offences Act, 1960 (Act 29/60)

Particulars of Offence

Eugene Amoako-Mensah: During the years, 2011 and 2012 at Sunyani in the Brong Ahafo Region did aid and abet the commission of a crime, namely stealing.

Count Four

Statement of Offence

Aiding and abetting money laundering activities: contrary to s.2 of the Anti-Money Laundering ACT, 2008 (Act 748)

Particulars of Offence

Eugene Amoako-Mensah: During the years, 2011 and 2012 at Sunyani in the Brong Ahafo Region did engage in transactions on behalf of John Cobbina when you knew or ought to have known that they were proceeds from unlawful activity.

Count Five

Statement of Offence

Stealing: Contrary to s.124 (1) of the Criminal Offences Act, 1960 (Act 29/60)

Particulars of Offence

1. John Cobbina: during the years, 2011 and 2012 at Sunyani in the Brong Ahafo Region did dishonestly appropriate the sum of GH₵4,453,445.73, property of J. Adom Company Limited

Count Six

Statement of Offence

Money laundering: Contrary to s.3 of the Anti-Money Laundering Act, 2008 (Act 749)

Particulars of Offence

John Cobbina: During the years 2011 and 2012 at Sunyani in the Brong Ahafo Region, knowing that property is proceeds of unlawful activity, did conceal the said property.

Count Seven

Statement of Offence

Falsification of accounts: Contrary to S140 (a) of the Criminal Offences Act, 1960 (Act 29/60)

Particulars of Offence

John Cobbina: During the years 2011 and 2012 at Sunyani in the Brong Ahafo Region, being an officer of J. Adom Company Limited, did falsify the payroll to include one hundred (100) non-existent employees.

The trial court found them guilty on all the charges except the charge of money laundering and passed the following sentences:

On counts one and two they were each sentenced to 10 years imprisonment with hard labour and a fine of Ghc100,000 or in default 3 years imprisonment with hard labour on each count.

The second accused Eugene Amoako-Mensah was sentenced to 10 years imprisonment with hard labour and GHc100,000.00 fine or in default 3 years IHL on count 3 and 10 years IHL and a fine of 100,000 or in default 5years IHL on count 4.

On count, 5 the 1st accused was sentenced to 20 years IHL and a fine of GHc300, 000.00 in default 5 years IHL.

On count seven, the 1st accused was sentenced to 10 years IHL and a fine of GHc100, 000.00. All the sentences to run concurrently.

The accused persons dissatisfied with the decision of the High Court appealed against their conviction and sentence. The Court of Appeal allowed the appeal in part; it acquitted and discharged both accused persons on the conspiracy charges on counts one and two. The 2nd accused was acquitted and discharged on the abetment charges in counts three and four as well. However the conviction and sentence of the 1st accussed on counts five and seven were affirmed by the Court of Appeal

The appeal before us is brought by the 1st accused John Cobinna, against his conviction and sentence on the charges of stealing and falsification of accounts as contained in counts five and seven of the charge sheet.

GROUNDS OF APPEAL

Per the notice of appeal filed on 9 April 2018, the appellant is canvassing the following grounds of appeal before this court.

a) The Judgment cannot be supported having regard to the evidence on record.
b) The sentences imposed on the Appellant are harsh having regard to the circumstances of this case.
c) The Court of Appeal erred in law when it sentenced the Appellant to both terms of imprisonment and fines.

Particulars of error of law

(1) The sentence of imprisonment together with fines on offences of stealing and falsification of accounts contrary to Sections 296(2) and 296(5) of the Criminal and other offences (Procedure) Act 1960, Act 30
(2) The sentence of the Appellant to ten (10) years IHL and GH₵100,000.00 or in default three (3) years IHL is over and above the maximum sentence under Section 296(2) of Act 30

(d) The Court of Appeal erred in holding that the offences of stealing and falsification of Accounts were proved against the Appellant at the Trial Court.

The notice of appeal indicated that additional grounds of appeal would be filed but no such additional grounds were filed.

Ground (d) which in effect is alleging the offences of stealing and falsification of account had not been proved against the appellant could be considered under the omnibus ground, which is ground (a). Counsel for the appellant argued these two grounds together and we would consider both grounds together.

It is the position of this court that in an appeal from the concurrent decisions of the courts below, that is the High Court and the Court of Appeal on the ground that the a conviction is not supported by the evidence on record the duty lies on the appellant to demonstrate to the court that the conclusions of the trial court and the Court of Appeal were not on the evidence on the record; or that on the totality of the evidence the charges against him had not been proved beyond reasonable doubt. See this court's decision in Isa v The Republic [2003-2005] SCGLR 792

Again in the case of Kamil v The Republic [2011]1SCGLR this court per Ansah JSC re-emphasized this principle and said

"It is now well settled in our jurisprudence that it is not easily permissible for a second appellate court like this one to interfere with concurrent findings of fact by lower courts unless such findings were not supported by the evidence so as to make the findings unreasonable."

The appellant herein therefore has the duty to demonstrate to us that the findings of the lower courts are unreasonable and this court ought to interfere with it to bring justice to him. Counsel for the appellant in an effort to discharge this burden launched an attack on the audit report, exhibits B, and with its attachments exhibits B1- B11. Exhibit B is the report the audit team produced upon investigating the appellant's activities with J Adom Ltd., his employer's accounts. Exhibits B1-B11 contain documents or information the team worked with to reach their findings in the audit report.

It is the position of the appellant that the audit report is not accurate. From my understanding of the arguments put up on behalf of the appellant, the figure of GHc4,453,445.73 which he was alleged to have stolen was arrived at without taking into account some of his transactions, some of those transactions were omitted, if those transactions were taken into consideration the figure would have been different. It has been argued by counsel for the appellant that if figures the auditors worked with as disclosed in exhibit B were compared with the contents or figures in the petty cash

vouchers tendered by the prosecution through the appellant it would be found that the alleged omissions cast doubts on the audit findings as contained in exhibit B.

It must be noted however that the question of inaccuracy of the audit report was raised by the appellant at the trial and that issue in our view was resolved. The appellant maintained at the trial that the audit report did not capture all the source documents he worked with as an account officer for the period covered by the audit report exhibit B. This challenge of the report led the court to make an order that the appellant be allowed into his former office to retrieve the documents he alleged he worked with which were not captured by the audit report. It turned out that the source documents the appellant alleged were not captured in the audit report were exhibits B1 to B11, which were already in evidence. All other source documents were tendered through the appellant. The issue of inaccuracy of the audit report due to failure to capture source documents was clearly resolved at the trial as the record clearly shows. The finding by the trial court that all documents/books the appellant worked with were accurately captured by the audit report was affirmed by the Court of Appeal see page 1171 to 1172 of the record. The evidence being attacked is documentary and are part of the record. A careful scrutiny of these documents only confirms the findings of the trial court and the intermediary appellate court. We find the argument alleging inaccuracy of the audit report not valid and cannot be sustained. It is further argued that payment the appellant made from his personal account on behalf of J Adom Ltd were not captured in the audit report if this had been done the figures given by the audit report as monies stolen by the appellant would have been different. The appellant called evidence through his three witnesses to prove monies he said he paid on behalf of the company from his personal account. PW2's evidence explained that monies that were genuinely spent on behalf of the company followed the approved practice. They were entered in the petty cash book and therefore do not form part of the adverse findings against the appellant. In our view, the appellant failed to discharge the duty placed on him in order to succeed on grounds (a) and (b).

A review of the evidence placed before the trial court in proof of the charges against the appellant. Will confirm our finding that the findings of the two lower courts are

reasonable. We will therefore briefly recount the evidence before the trial court as disclosed in the record.

Evidence of the prosecution witnesses

The prosecution called three witness to prove the charges against the appellant at the trial.

The first prosecution witness was the Chief Executive Officer of J Adom Ltd. the employer of the appellant; he is the complainant in the matter. His evidence was that the appellant was employed by his company when he graduated from Sunyani Polytechnic in 2005. He had not worked in any other organization apart from J Adom Ltd and his earning was GHc150 to begin with and rose to GHc1, 200. His duties included receiving and disbursing money on behalf of the company. He was responsible for payment of salaries of the employees of the company as well. According to the witness, in 2012, the company realized it had lost a lot of money, it therefore engaged a private audit company E. Osei & Associates to audit the books of the company. The audit report disclosed that the appellant had embezzled about Ghc4, 000,000.00 of the company's money. The company has an account with Zenith bank Sunyani and the 2nd accused Eugene Amoako-Mensah, an employee of the Zenith bank was J. Adom Ltd.'s relationship officer with the bank. The said Amoako-Mensah collected monies from the company to deposit in the company's account, investigations reveal that he deposited some of the company's money in the appellant's personal account instead of the company's account. PW1 denied it was his company's decision to conduct business through appellant's personal account in Zenith bank. According to him, he never knew the appellant had an account with Zenith bank until he was arrested.

The second prosecution witness was Mr. Abraham Tetteh; he is an officer of E. Osei & Associates, the audit firm that investigated the accounts of J Adom Ltd. He gave evidence on the work the audit team did and gave details of what happened to the accounts of J. Adom Ltd. under the stewardship of the appellant. He tendered the audit report as exhibit B as well as the source documents on which the report was based that include all receipts

and bank statements as Exhibits B1 – B11. The report covered the period 1st July 2006 to 6th August 2012.

The witness explained the audit investigation the team made in respect of the appellant's stewardship and said they examined receipts and payments, that is the total monies given to the appellant during the period under review. Their finding was that for the period under review, total receipt was GHc 50,457,253.21 and total payment was GHc47, 134,055.87. Monies the appellant could not account for was GHc3, 323,197.34

According to the witness, they examined appellant's daily petty cash and reconciled the petty cash with bank statements**.** The witness explained that the normal practice is that when cheques are written for office use and the money is cashed from the bank, it should be entered into the petty cash book. However, they found that the appellant made several withdrawals by cheque but failed to enter them in the petty cash book. There was an accumulated amount of cheques written totaling GHc69,700 but were not entered into the petty cash book.

Similarly, an accumulated amount of GHc33, 500 was withdrawn from Ecobank Sunyani but this was not entered in the petty cash book. Exhibit B gives details of how these figures were arrived at. In view of the appellants challenge in this appeal to the figures, we will reproduce these details as contained in the various pages of exhibit B

1. The chart below is found on page 19 of exhibit B, it shows cheques the appellant cashed at ADB the various amounts involved how he accounted for only part of the cash received on behalf of the company.

Receipts from ADB Not Recorded Into Petty Cash Book

Date	Chq. No	Amount Received From Bank/K Adom	Amount Recorded	Difference
11/11/2008	707770	13,550.00	1,050.00	12,500.00

12/12/2008	707774	680,000.00	650,000.00	30,000.00
24/10/2008	707762	200,000.00	180,000.00	20,000.00
6/10/2008	707756	8,000.00	6,000.00	2,000.00
24/10/2008	707761	6,000.00	-	4,200.00

Total **69,000.00**

The chart below found on page 20 of exhibit B represents moneys transferred to the company through Ecobank Sunyani.

Date	Payee	Means Of Transfer	Amount Received	Amount Recorded In Daily Petty Cash Book	Amount Missing In Books
26/09/2008	John Cobbina	Email	3,000.00	-	3,000.00
31/10/2008	John Cobbina	Email	4,000.00	3,500.00	500.00
20/11/2008	John Cobbina	Email	10,000.00	-	10,000.00
20/11/2008	John Cobbina	Email	10,000.00	-	10,000.00
24/12/2008	John Cobbina	Email	30,000.00	20,000.00	10,000.00
Total			**57,000.00**	**23,500.00**	**33,500.00**

Further findings of the audit team, according to PW2's evidence is that J Adom Ltd. bought a software called PASTEL this was to stop manual system of preparing financial reports.

As at 18th of August when the company was, transferring to the use of the software there was a total balance of GHc11, 709.08 however only Ghc700 was transferred as the closing balance. There was a shortfall of Ghc11, 009, 08, which the appellant did not account for.

Other areas of the company's books that had shortfalls were staff advance repayments. The witness explained that staff of J. Adom Ltd were given soft loans, which they paid back, by instalments. A total of Ghc135, 712 of those repayments were misappropriated by the appellant.

Page 7 of exhibit B has details of staff loans repayments which the appellant misappropriated

Year	Amount
2008	6,205.00
2009	29,591.00
2010	54,053.00
2011	38,183.00
2012	7,680.00
	135,712.00

The other is unclaimed salaries; when staff received their salaries they signed the payment voucher, however many names appeared on the voucher who were deemed to have received salaries but did not sign their names. In such a circumstance the money is deemed not to have been received and ought to have been paid back to the company, the appellant who was in charge of payment of salaries did not do that. Ghc142, 010.63 of such monies were found to have been embezzled by the appellant

The audit report also found that the appellant withdrew a total of GHc74, 000 from Mr. J Adom's personal account at Zenith and Barclays banks in Sunyani.

It is a further finding of the audit team that a total of GHc448, 800 was transferred from J Adom Ltd. head office Accra to the Sunyani office but there was no trace of this in the books of the company in Sunyani. Page 12 of exhibit B gives details as shown below.

Date	Name Of Recipient	Transferred Amount (GHS)	Accounted For (GHS)	Unaccounted For (GHS)
2/2/2009	John Cobbina	46,000.00	-	46,000.00
2/11/2009	John Cobbina	15,000.00	-	15,000.00
3/12/2009	John Cobbina	11,200.00	-	11,200.00
17/4/2009	John Cobbina	4,500.00	-	4,500.00
26/5/2009	John Cobbina	2,000.00	-	2,000.00
14/7/2009	John Cobbina	10,000.00	-	10,000.00
28/9/2009	John Cobbina	10,000.00	-	10,000.00
11/3/2009	John Cobbina	10,000.00	-	10,000.00
12/3/2009	John Cobbina	10,000.00	-	10,000.00
16/03/2009	John Cobbina	15,000.00	-	15,000.00
28/04/2009	John Cobbina	157,100.00	-	157,100.00
5/5/2010	John Cobbina	107,600.00	-	107,600.00
27/9/2010	John Cobbina	40,000.00	-	40,000.00
6/2/2011	John Cobbina	10,000.00	7,100.00	2,900.00
21/6/2012	John Cobbina	10,000.00	2,500.00	7,500.00
Total				**448,800.00**

1. Page 17 of exhibit B gives details of moneys Eugene Amoako-Mensah took from J Adom Ltd as its relationship officer at Zenith bank, which moneys he should have deposited in J Adom's account but deposited same in the appellant's personal account. The appellant with the help of the said Amoako-Mensah succeeded in misappropriating GHc1, 002,387.50 from his employer.

Date	Account Type	Account Name	Depositor's Name	Amount Gh¢
02/09/2011	Savings	John Cobbina	Eugene Amoako Mensah	20.00
02/09/2011	Current	John Cobbina	Eugene Amoako Mensah	30.00
02/09/2011	Savings	John Cobbina	Eugene Amoako Mensah	1,000.00
18/3/2011	Current	John Cobbina	Eugene Amoako Mensah	17,937.50
26/4/2011	Current	John Cobbina	Eugene Amoako Mensah	15,000.00
26/4/2011	Current	John Cobbina	Eugene Amoako Mensah	34,200.00
05/3/2011	Current	John Cobbina	Eugene Amoako Mensah	14,000.00
15/6/2011	Current	John Cobbina	Eugene Amoako Mensah	13,000.00
21/6/2011	Current	John Cobbina	Eugene Amoako Mensah	200.00
21/6/2011	Current	John Cobbina	Eugene Amoako Mensah	1,500.00
17/8/2011	Current	John Cobbina	Eugene Amoako Mensah	5,000.00
11/11/2011	Current	John Cobbina	Eugene Amoako Mensah	100,000.00
12/01/2011	Current	John Cobbina	Eugene Amoako Mensah	60,000.00
12/05/2011	Current	John Cobbina	Eugene Amoako Mensah	50,000.00
12/05/2011	Current	John Cobbina	Eugene Amoako Mensah	85,000.00
12/11/2011	Current	John Cobbina	Eugene Amoako Mensah	200,000.00
29/12/2011	Current	John Cobbina	Eugene Amoako Mensah	240,000.00
01/11/2012	Current	John Cobbina	Eugene Amoako Mensah	165,500.00
Total				**1,002,387.50**

One Nancy Ahornu transferred an amount of GHc3, 100 into the appellant's personal account in Zenith bank Sunyani this was not entered in the petty cash book.

Payment vouchers that were not supported by receipts totaled GHc311, 554.08.

All these figures totaled GHc4, 552,583.13 that the audit team found the appellant could not account for.

PW2 told the court the appellant fully participated in the audit investigation until they questioned him on his bank statement from Zenith bank. Realizing his bank statement had been obtained by the audit team he indicated he would no longer participate in the work of the audit team and withdrew.

The witness was taken through a lengthy cross-examination. Suggestions were made by the appellant that the report does not cover huge sums of money the appellant paid in transactions for J Adom Ltd. The witness made reference to various attachments to the report and explained that all transactions that went through the books were captured by the report.

It was further suggested to the witness that huge sums of money were paid from appellant's personal account to the company's creditors and staff. It was further suggested to the witness that withdrawals from and payments in to the appellant's personal account by one Bright Gyasi a staff of the company is a proof. The witness denied this and explained that transaction in appellant's personal account by Bright Gyasi has nothing to do with the company, for the appellant could issue cheques to whomever he wishes from his personal account. Yaw Abrafa's transactions in the appellant's account is a second example cited by the appellant as staff who took monies from the appellant's personal account in Zenith bank for the benefit of the company. The witness however explained that Yaw Abrafa was a staff in charge of the cement division of the company. He did not have a safe in his office where he could keep cash, so he gives his cash to the appellant for safekeeping in the office safe. Instead of keeping it in the office safe, the appellant pays it into his personal account and when Abrafa makes demands the appellant issues his personal cheque.

In an attempt to discredit exhibit B2 it was suggested to the witness that contrary to the evidence in that document, the appellant did not divert any monies belonging to the company in to his personal account in Zenith bank. In answer the witness made reference to page 26 of exhibit B10 and demonstrated that on 28 December 2011 an amount of GHc250, 000 was transferred to the Sunyani office as impress, on 29 December 2011 the 2nd accused Amoako-Mensah, deposited GHc240, 000 out of the amount into the

appellant's personal account in Zenith bank instead of the company's account. (sight must not be lost of the fact that the record has other instances where the 2nd accussed was instrumental in assisting the appellant to divert large sums of money meant for J Adom Ltd into the appellant's personal account in Zenith bank Sunyani; it was these facts of the 2 accussed's involvement in the commission of the crime the appellant was charged with that led to the conspiracy and abetment charges against the 2nd accussed.)

It was further suggested to the witness that one Napari Phillip an account officer of a subsidiary of J Adom Ltd made numerous withdrawals from the appellant's personal account; however, the audit report did not capture it because the report did not cover all transactions, the report picked and chose which transaction it wanted to capture, The witness's answer was that, all transactions that had been entered into the payment voucher and entered into the daily petty cash book are considered genuine transactions.

Napari later in the proceedings gave evidence for the appellant as DW3 and stated that he collected monies from the appellant for the payment of salaries of Nsenmere Quarry workers.

The third prosecution witness was Coporal Yaa Boakyewaa. She is the crime officer who investigated the matter. She gave evidence and said initially the CEO of J Adom Ltd. made a report to the Police that a cashier of the company one Maxwell Mahama was engaged in financial malpractices. In the course of the investigation it was found that the appellant (1st accused at the trial) took an accumulated amount of GH₵55,000.00 from Mahama under the pretext that the CEO of the company instructed him to collect same. The appellant could not account for the amount collected. He was arrested and arraigned before the circuit court and kept in police custody to assist police in the investigations. The court ordered a general auditing of the books of J Adom Ltd. The witness said she was part of the audit team that audited the appellant. The appellant, she said, cooperated with the team up to a point and withdrew.

The witness said she conducted a search at the appellant's premises and found documents on various landed properties. She tendered these in evidence as Exb. C, C1-

C18. The documents cover seven building plots in Sunyani, three plots at Techiman, three fully furnished houses at Hansua-Techiman and a mansion numbered H/No 384 Belin Top, Sunyani,. Other properties are a cosmetic shop at Techiman, a hair products shop and a hardware shop at Fiapre. The witness said her investigations revealed further that the appellant had also established a business, Cobbyvet Enterprise, which undertakes businesses such as civil engineering, imports and exports, road construction, Trading and Distribution and general merchandise. The registration certificate of the business was tendered as Exb. D. The appellant also acquired luxury cars, a Hyundai Santa Fe and a Mercedes Benz.

The witness tendered the recordings in the diary of the appellant as exhibits G, G1 and G2. These have records the appellant kept of all the properties he had acquired and records of how he had supported five of his siblings in the USA.

The witness further said she found that the appellant has accounts with 8 banks. His account at Zenith Bank had large lodgments of cash at short intervals. She therefore focused investigations on that account. The lodgments were made by the appellant and the second accused (who is now a freeman). She tendered cash payment receipts, exhibits E, E1 to E28 as evidence of cash deposits the appellant made to the banks. The audit report revealed those monies were misappropriated by the appellant. Upon advice by the Attorney-General, the appellant was charged with the various offences and arraigned before the High Court for trial.

Appellant's Evidence at the trial

The appellant denied he committed the offences he was charged with. He confirmed PW1's evidence that he was employed by J Adom as an account officer in 2005. The company he said has four subsidiaries. He was the account officer based in the parent company office in Sunyani He stated his duties as the account officer as follows:

a) He was in charge of the daily impress of the company
b) He was in charge of deposit and withdrawal of cash to and from the various corporate bank accounts of the company

c) He monitored and managed payments to staff and contractors.
d) Other additional duties assigned to him

He maintained he was not a signatory to any of the accounts of the company. He had no hand in the preparation of payrolls of staff. His only role was to take the approved pay voucher and go out with account officers and site supervisors to effect payment of staff salaries. Salaries of workers were often paid in arrears. He did payment by cash.

According to the appellant throughout his work period with J Adom Ltd, between 2005 and 2012, annual financial statements were prepared. External auditors do audit the account of the company yearly so do internal auditors but no queries were ever raised against his work as an account officer.

Appellant further said all receipts from banks to him could be found in the credit vouchers and cheque withdrawal vouchers, which are in the custody of the CEO PW1. He however observed that Exb. B1-B9 attached to the audit report has none of the audit vouchers. Exb. B10 has some credit vouchers though.

He confirmed PW2's evidence on the normal practice in respect of cheque withdrawals made from banks and said: when monies were withdrawn from the bank, entries were made in either the credit voucher or the cheque withdrawal voucher. They are then entered in the petty cash – an automated software used for the monitoring of funds and expenses and finally entered in the PASTEL. (This presupposes that the petty cash book is the final source of information for the credit and withdrawal vouchers).

Appellant maintained that it was management decision to deposit the company's funds in his personal account. The appellant denied that he misappropriated funds of the company, for, all his transactions as the account officer were entered in source documents, which were not made available to him at the trial.

Appellant maintained he was not consulted by the auditors and therefore he knew nothing about their work. .

The appellant called three witnesses who testified that they received various monies from the appellant. DW1 said he was the General manger of Nsenmere Quarries (a subsidiary of J. Adom Ltd from May 2011 to December 2018).

He said he received various amounts from the appellant. Some were his salaries others were salaries of workers of the Quarry. DW2 said he works with Bows Consortium and received monies from appellant on behalf of his company.

DW3 was Napari Philip an accounts officer of Nsenmere Quarries. He admitted he received various monies from appellant mostly for the payment of salaries of workers of the Quarry.

In cross-examination, he admitted that the appellant was part of the audit investigation because the day he appeared before the audit team, as he was about to leave the appellant arrived to meet the team.

Thus the evidence of appellant's own witness exposed him as not telling the truth when he said he did not participate in the audit investigations. It is also not the truth as the appellant stated in his evidence that he did not have access to the source documents he worked with as an account officer that is credit vouchers and cheque payment vouchers. The record have it that upon the trial court's orders appellant went back to his former office and brought to court the alleged source books. It turned out that the said books were already in evidence as Exhibits B1 to B11. Other source documents were tendered through appellant as Exhibit S series, Exhibit T series and U series.

The evidence on record confirmed by the appellant's own witness points to the fact that the appellant participated in the audit investigation until he himself refused further participation. Counsel for the appellant's argument that we should discredit the audit report because the appellant did not participate in the investigation has no basis and we dismiss that argument as baseless.

The Law

The requirement of the law per Article 19 (2) (c) of the 1992 Constitution is that a person charged with a criminal offence is presumed innocent until he is proved guilty or he pleads guilty. The article reads:

(2) "A person charged with a criminal offence shall -

(c) be presumed to be innocent until he is proved or has pleaded guilty"

The burden of proof in a criminal action therefore totally rests on the prosecution.

Section 11 (2) of the Evidence Act, 1975 NRCD 323 provides that, for the prosecution to succeed in discharging that burden of proof, it must produce evidence as to facts that are essential to the guilt of the accused person in such a manner that the totality of the evidence would tell a reasonable mind that those facts exist beyond reasonable doubt.

Section 11 (2) of NRCD 323 reads:

"In a criminal action, the burden of producing evidence, when it is on the prosecution as to a fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on the totality of the evidence a reasonable mind could find the existence of the fact beyond a reasonable doubt."

The charge of stealing

Stealing is defined by section 125 of the Criminal Offences Act, 1960 Act 29 as follows:

"A person steals who dishonestly appropriates a thing of which that person is not the owner."

The essential ingredients of the crime of stealing which the prosecution ought to prove beyond reasonable doubt therefore are:

a) The subject matter of the theft that is the monies the appellant is accused of stealing belong to another person.
b) He appropriated the monies and

c) He did so dishonestly

There is no dispute about the fact that the monies, subject matter of the crime belong to the appellant's employer J Adom Ltd.

The Oxford Advanced Learner's Dictionary defines appropriation as "the act of taking something which belongs to somebody else, especially without permission"

Section 122 of the Criminal Offences Act 1960, Act 29 explains what constitutes an act of appropriation

"Acts which amount to an appropriation

(1) An appropriation of a thing by a trustee means a dealing with the thing by the trustee, with the intent of depriving a beneficiary of the benefit of the right or interest in the thing, or in its value or proceeds, or a part of that thing.

(2) An appropriation of a thing in any other case means any moving, taking, obtaining, carrying away, or dealing with a thing, with the intent that a person may be deprived of the benefit of the ownership of that thing, or of the benefit of the right or interest in the thing, or in its value or proceeds, or part of that thing."

Section 120 of the Criminal Offences Act, 1960 Act 29 defines dishonest appropriation as follows:

(1***) "An appropriation of a thing is dishonest***

(a) if it is made with an intent to defraud, or

(b) if it is made by a person without a claim of right, and with a knowledge or belief that the appropriation is without the consent of 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. "

The prosecution's task therefore is to adduce evidence beyond reasonable doubt that the appellant herein appropriated his employer's funds with the intent to deprive J Adom of the benefit of its ownership of those monies, The subject matter of the charge of stealing. In other words, the appellant dishonestly appropriated the moneys of J Adom Ltd. entrusted to him as its accounts officer.

Falsification of accounts

Section 140 (a) of the Criminal Offences Act, 1960, (Act 29)

(1) A clerk, a servant or a public officer, or an officer of a partnership, company or corporation commits a second degree felony who does any of the acts mentioned in paragraph (a) or (b), with intent to cause or enable a person to be defrauded, or with intent to commit or to facilitate the commission, personally or by any other person, of a criminal offence;

(a) conceals injures, alters or falsifies a book, or an account kept by or belonging or entrusted to the employers or to the partnership, company or corporation; or corporation; or entrusted to the officer, or to which the officer has access, as an officer or omits to make a full and true entry in an account of anything which the officer is bound to enter in the account; or

(b) publishes an account, a statement or prospectus, relating to the affairs of the partnership, company or corporation, which the officer knows to be false in a material particular.

It is argued by counsel for the appellant that to succeed in proving falsification of account the prosecution ought to tender a book or an account that had been falsified. This argument in our view is a misconception of section 140 (1) (a) of the Criminal Offences

Act. The contents of exhibit B part of which I have reproduced above and its attachment disclose the account books the appellant falsified by deliberately omitting to enter transactions and in some cases understated the amounts he should have entered,

Defence

On the part of the defence that is the appellant, all that he needs to do by way of producing evidence is to raise a doubt as to his guilt***. Woolmington v Director of Public Prosecution [1935] AC 462*** is the locus classicus on this principle where the Appeal Court of England per Sankey LC expressed the view that ***"....while the prosecution must prove the guilt of the prisoner, there is no such burden laid on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the jury of his innocence."***

From studying the record and from the analysis we have made so far we do not hesitate in stating that the prosecution adduced sufficient evidence in proof of the charges against the appellant.

The prosecution supported the oral evidence of its witnesses with copious documentary evidence of the methods the appellant used to defraud his employer of huge sums of money throughout his entire period of employment with the company, spanning from 2006 to 2012

The exhibit B series tendered by the prosecution is a direct documentary evidence that as the accounts officer of J Adom various monies came into possession of the appellant for the use of the company but he misappropriated same for his personal use. That he has the intention to defraud his employer can be deduced from his behavior and the mode of operation

The prosecution further gave evidence on the wealth acquired by the appellant. His earnings were very meager, his affluent life style and the properties found in his

possession points irresistibly to the fact that he acquired these properties from the monies he stole from his employers.

The opening pages of exhibit B give details of every year captured in the audit team's work and the various amounts involved in the lost the company suffered in each year through the appellant's dishonest handling of the company's accounts. They give the volumes and pages of the various attachments to the report. A careful scrutiny of these does not disclose any discrepancies in figures, as counsel for appellant wants us to believe in his written statement. Granted there were any discrepancies in the figures at all, they do not cast any doubt on the ample proof as demonstrated above that the appellant stole moneys from his employer J Adom Ltd.

On the falsification of accounts, the evidence so far recounted above goes to prove that the appellant altered or falsified the account books of his employers with the intent of defrauding the company. There is evidence that the appellant paid salaries to non-existing staff who never signed the vouchers. There were also unclaimed salaries, which he never paid back to the company because appellant inserted as many as hundred ghost names on the pay roll. He failed to make entries into the account books of monies he withdrew from the banks thereby concealing and defrauding his employer of the various sums of money stated in exhibit B

The essential facts that point to the guilt of accused on the charges of stealing and falsification of accounts have been proved by the prosecution beyond reasonable doubt. The appellant has not offered any explanation that throws any doubt on the evidence on record.

The concurrent decisions of the High Court and the Court of Appeal convicting the appellant on the two charges of stealing and falsification of accounts are supported by the evidence on record. Grounds (a) and (d) of appeal fail and are hereby dismissed.

We will proceed to consider Grounds (b) and (c) together

It is argued on behalf of the appellant that the culminating effect of the sentence on stealing if the appellant fail to pay the fine is that he will be serving the maximum sentence of 25 years. The 10 years for falsification of accounts is also the maximum sentence for that offence. The trial court and the Court of Appeal did not give any reasons for imposing the maximum sentence. The appellant, it was further argued, was in custody for 2 years during the trial but the record does not disclose that this was taken into account in the sentencing; this is in breach of Article 14 (6) of the 1992 Constitution. It is prayed on behalf of the appellant that the following mitigating factors are taken into consideration and the sentence reduced. The appellant is young and is a first offender.

It is a futher argument of the appellant that imposing a fine in addition to the custodian sentence handed over to the appellant is an error on the part of the trial court, which was affirmed by the Court of Appeal. A further error on the part of the trial court was to impose a term of five years in default of payment of the fine imposed on him on the charge of stealing.

By the provision of section 297 (3) of the Criminal and Other Offences Procedure Act 1960 Act 30 the maximum default sentence the trial court could impose is 3 years. The 5years default sentence imposed on the appellant is an obvious error, which the respondent concedes. S297 (4) of Act 30 reads: ***"The imprisonment to which a person is sentenced under subsection (3) shall be in addition to any other imprisonment to which that person is sentenced, and in the case of a felony or misdemeanor shall not exceed three years and in any other case shall not exceed twelve months"***

This court has the power to correct such an error and that will not occasion the appellant any miscarriage of justice. We do hereby effect that correction. The 5 years of imprisonment in default of paying the fine imposed on the appellant on the stealing charge is hereby corrected to read 3 years instead of 5 years.

The court acted within the law when it imposed fines in addition to the custodial sentence. It is part of counsel for the appellant's submission that the trial court erred in imposing fine in addition to the custodial sentence it imposed on the appellant. This argument is a misconception of the law; for section 297 (1) of Act 30 reads:

"Where a person is convicted of a felony or a misdemeanor or of an offence punishable by imprisonment other than an offence for which the sentence is fixed by law, the Court may sentence that person to a fine in addition to or in lieu of any other punishment to which that person is liable." (Emphasis mine)

Stealing is a second-degree felony and so is falsification, as quoted in section 279 (1) of Act 30 the court has the discretion to impose a fine in addition to a custodial sentence. That the court gave imprisonment terms in default of payment of additional fines does not amount to imposing the maximum fine on the appellant.

On the question whether the trial court and the Court of Appeal ought to give reasons for imposing the maximum sentence on the appellant for both offences; it is trite that a trial court has the discretion to determine the length of sentence. See Kwashie v The Republic [1971]1 GLR 488 where the Court of Appeal per Azu Crabbe JA said: "***The determination of the length of sentence within the statutory maximum sentence is a matter within the discretion of the trial court, and the courts always act upon the principle that the sentence imposed must bear some relation to the gravity of the offence"***

The courts however do not act arbitrarily in the exercise of such discretion. Specific factors are taken into consideration depending on the circumstances of each case. The court in the Kwashie v the Republic case numerated the factors that needed to be considered as follows: "***In determining the length of sentence, the factors which the trial judge is entitled to consider are: (1) the intrinsic seriousness of the offence; (2) the degree of revulsion felt by law-abiding citizens of the society for the particular crime; (3) the premeditation with which the criminal***

plan was executed; (4) the prevalence of the crime within the particular locality where the offence took place, or in the country generally; (5) the sudden increase in the incidence of the particular crime; and (6) mitigating or aggravating circumstances such as extreme youth, good character and the violent manner in which the offence was committed."

In ***Adu Boahen v The Republic [1972] 1 GLR 70*** the position that the good record of an appellant is not relevant when it comes to imposing a deterrent sentence was reemphasized by the Court of Appeal. The court held thus:

"When the court decides to impose a deterrent sentence the good record of the accused is irrelevant."

This court in recent decisions had approved the above stated factors as factors that a court need to take into consideration in determining the harshness or otherwise of a sentence. See the case of ***Kamil v The republic [2011] 1 SCGLR 300*** where the court re-emphasized that in considering the factors apart from giving consideration to the offence and the offender, it is important the interest of society is considered as well. The court therefore expressed its opinion on the issue as follows: "***a judge in passing sentence may consider the offence and the offender as well as the interest of society. Where a appellant complains about the harshness of a sentence (as in this case) 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."***

In ***Gligah v Atiso [2010] SCGLR 870*** this court expressed the opinion that in considering sentencing the status and the profession ought to be looked at. Gligah and Atiso were 2 police men who whiles on duty took advange of a lady and raped her in turns. The court per Dotse JSC at page 889 of the report said: ***"We are, however, of the opinion that the time has come for the courts of law to take into consideration, the status and type of profession and/or work the accused person does before sentence is imposed. For example, if an auditor, whose***

duty it is to check the accounts in the performance of their work either colludes or abets in the embezzlement of funds of the organization, one would expect the internal auditor to be drastically dealt with because it was he who abdicated his watchman role to facilitate the committing of the crime"

I share a similar viewpoint. The maximum custodian sentence for stealing is 25 years imprisonment with hard labour see section 296 (5) of Act 30 The court gave the appellant 20 years IHL in addition, a fine of Ghc300,000.00.

Per section 296(2) of Act 30 the maximum sentence for falsification of account is 10 years the appellant was handed down the maximum for this offence plus a fine of GHc100.000.00 **the** sentences were to run concurrently.

The appellant herein in his own evidence has made known his academic achievements; his counsel has urged us to take into consideration his academic achievement in determining his appeal against sentence. By his evidence, he is an accountant on the road of becoming a chartered accountant. To hold such a position, generally, a high standard of intergrity especially in matters of accounting is expected of him. In his position with his employer, in particular where all the responsibilities of the company's accounts in the Sunyani office had been entrusted to him, it is expected that he would exhibit some level of intergrity. This however is not the case. For a period of six years, that the audit investigations covered it has been proved from the chats l reproduced from exhibit B that the appellant consistently and persistently looted his employer of huge amounts of money plunging a company, which obviously provided jobs to many in Sunyani and its environs in to huge debts. With the ill-gotten wealth, he went in to the spree of acquiring properties all over. The manner in which the appellant conducted himself in committing the offences over a period, and the way he spent the proceeds of his nefarious activities under the very nose of his employer is very abhorring. It is our decision that the offences the appellant committed are very grievous and deserve deterrent and exemplary punishment. The sentences passed by the trial court, which were affirmed by the Court of Appeal we find to be in place.

We however need to resolve the issue as to whether the trial court in passing the sentences took into consideration Article 14(6) of the 1992 Constitution or not. This article falls under the provision of fundamental human rights and freedoms of the citizen of this country such rights this court owes a high duty to protect. Article 14(6) reads: (***6)*** ***"Where a person is convicted and sentenced to a term of imprisonment for an offence, any period he has spent in lawful custody in respect of that offence before the completion of his trial shall be taken into account in imposing the term of imprisonment."***

This court in the case of ***Booso v The Republic [2009] 420*** considered the issue as to how an appellate court could determine whether this constitutional provision had been complied with or not and came to the conclusion that the compliance of this constitutional provision should be clear on the face of the record.

The Court per Wood CJ held: ***"This clear constitutional provision enjoins judges, when passing sentence, to take any period spent in lawful custody before the conclusion of the trial into account. A legitimate question which might arise in any given case and which does, indeed arise for our consideration in the instant appeal is how do we arrive at the conclusion that this constitutional mandate has been complied with? We believe this is discernible from the record of Appeal. We would not attempt to lay down any hard and fast rule as to the form, manner or language in which the compliance should be stated, but the fact of the compliance must either explicitly or implicitly be clear on the face of the record of Appeal."***

There is no reason why we should depart from this position on the issue. From the record before us, there is no clue that the trial judge considered article 14(6) in passing the sentences under consideration. In the circumstances, we deem it necessary in the interest of justice to take into consideration the two years the appellant spent in custody before the conclusion of the trial. Since the sentences run concurrently, we would reduce the higher sentence of 20 years imprisonment with hard labour by two years. To the extent

that there is no clear indication on the record that article 14(6) was taken into consideration in the sentencing of the appellant, the appeal against sentence is allowed.

The sentence of 20 years IHL on the charge of stealing is hereby reduced to 18 years imprisonment with hard labour.

The appeal against conviction is hereby dismissed.

A. M. A. DORDZIE (MRS.)
(JUSTICE OF THE SUPREME COURT)

V. J. M. DOTSE
(JUSTICE OF THE SUPREME COURT)

N. S. GBADEGBE
(JUSTICE OF THE SUPREME COURT)

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

PROF. N. A. KOTEY
(JUSTICE OF THE SUPREME COURT)

COUNSEL

ALFRED TUA YEBOAH FOR THE APPELLANT/APPELLANT.

FRANCES MULLEN ANSAH, CHIEF STATE ATTORNEY FOR RESPONDENT/RESPONDENT.