IN THE HIGH COURT OF JUSTICE HELD IN ACCRA ON THURSDAY THE 12TH DAY OF NOVEMBER, 2026 BEFORE HIS LORDSHIP JUSTICE FRANCIS APANGABUNO ACHIBONGA JA, JUSTICE OF THE COURT OF APPEAL SITTING AS AN ADDITIONAL HIGH COURT JUDGE AT THE SPECIALIZED COURT 1

SUIT NO: CR/0418/2025

THE REPUBLIC

VRS.

1. **KWABENA ADU BOAHENE**
2. **ANGELA ADJEI BOATENG** — **ACCUSED PERSONS**
3. **ADVANTAGE SOLUTIONS LIMITED**

CERTIFIED TRUE COPY 13/11/26
.....DEPUTY REGISTRAR
HIGH COURT
CRIMINAL COURT
LAW COURT COMPLEX

A1 AND A2 PRESENT

A2 REPRESENTS A3

COUNSEL: **DR. JUSTICE SREM-SAI (DAG) WITH FAFA KPODO (CSA), ESI DENTAA YANKAH (PSA), GIFTY DUMELO (ASA) AND RADIATU ABDULAI (ASO) OF EOCO FOR THE REPUBLIC/RESPONDENT - PRESENT**

SAMUEL ATTA AKYEA WITH KWAKU OSEI ASARE, PETER OSEI-ASAMOAH, BEYEEMAN OFORI ATTA-AKYEA, DANIEL OKYERE, NANA NTI OFORI-DEBRAH AND

CHARLES BOAKYE FOR THE ACCUSED PERSONS/APPLICANTS - PRESENT

RULING ON SUBMISSION OF NO CASE

On 30/04/2025, the accused persons were arraigned before this court on the following charges

COUNT ONE

Statement of Offence:

Stealing, contrary to Section 124(1) of the Criminal Offences Act, 1960 (Act 29).

Particulars of Offence

KWABENA ADU-BOAHENE, that you, on or about February 5, 2020, in Accra and within the jurisdiction of this Court, did, under the guise of procuring a cyber defence system for the Republic of Ghana from ISC Holdings Limited, dishonestly appropriate the sum of about Twenty-seven Million and One Hundred Thousand Ghana Cedis (GH¢27,100,000.00) belonging to the Republic of Ghana with the intention of depriving the Government of Ghana of the said amount.

COUNT TWO

Statement of Offence

Stealing, contrary to Section 124(1) of the Criminal Offences Act, 1960 (Act 29)

Particulars of Offence

KWABENA ADU-BOAHENE, that you, on or about March 20, 2020, in Accra and Within the jurisdiction of this Court, did, under the guise of procuring a cyber defence system for the Republic of Ghana from ISC Holdings Limited, dishonestly appropriate the sum of about One Million Ghana Cedis (GH¢ 1,000,000.00) belonging to the Republic of Ghana with the intention of depriving the Government of Ghana of the said amount.

COUNT THREE

Statement of Offence

Stealing, contrary to Section 124(1) of the Criminal Offences Act, 1960 (Act 29).

Particulars of Offence

KWABENA ADU-BOAHENE, that you, on or about March 30, 2020, in Accra and within the jurisdiction of this Court, did, under the guise of procuring a cyber defence system for the Republic of Ghana from ISC Holdings Limited, dishonestly appropriate the sum of about Twenty-one Million Ghana cedis (Gh¢ 21,000,000.00) belonging to the Republic of Ghana with the intention of depriving the Government of Ghana of the said amount.

COUNT FOUR

Statement of Offence

Conspiracy to steal contrary to Sections 23(1) and 124(1) of the Criminal Offences Act, 1960 (Act 29).

Particulars of Offence

KWABENA ADU-BOAHENE and ANGELA ADJEI BOATENG, that you, in February and March 2020, in Accra and within the jurisdiction of this Court, did agree to act together to steal the sum of about Forty-Nine Million, One Hundred Thousand Ghana Cedis (GH¢49,100,000.00), belonging to the Republic of Ghana with the intention of depriving the Government of Ghana of the said amount.

COUNT FIVE

Statement of Offence

Defrauding by false pretences, contrary to Section 131(1) of the Criminal Offences Act, 1960 (Act 29).

Particulars of Offence

KWABENA ADU-BOAHENE, that you, in or about February and March, 2020, in Accra and within the jurisdiction of this Court, by the false pretence that you were going to buy a cybersecurity system for the Republic of Ghana, did, cause the Government of Ghana to part with the sum of about Forty-Nine Million, One Hundred Thousand Ghana Cedis (GH¢49,100,000.00), belonging to the Republic of Ghana.

COUNT SIX

Statement of Offence

Wilfully causing financial loss to the State contrary to Section 179A (3)(a) of the Criminal Offences Act, 1960 (Act 29).

Particulars of Offence

KWABENA ADU-BOAHENE, that you, in February and March 2020, in Accra and within the jurisdiction of this Court, did, under the guise of procuring a cyber defence system for the Republic of Ghana from ISC Holdings Limited, wilfully cause the Republic of Ghana to lose the sum of about Forty-Nine Million, One Hundred Thousand Ghana Cedis (GH¢49,100,000.00).

COUNT SEVEN

Statement of Offence

Using public office for profit contrary to Section 179C (a) of the Criminal Offences Act, 1960 (Act 29).

Particulars of Offence

KWABENA ADU-BOAHENE, that you, in February and March, 2020, in Accra and within the jurisdiction of this Court, while holding a public office of the Director of the Bureau of National Communication, did, under the guise of procuring a cyber defence system for the Republic of Ghana from ISC Holdings Limited, dishonestly abuse your office for private benefit in the sum of about Forty-Nine Million, One Hundred Ghana Cedis (GH¢49,100,000).

COUNT EIGHT

Statement of Offence

Collaboration to commit a crime, to wit - using public office for profit contrary to Section 179C (b) of the Criminal Offences Act, 1960 (Act 29).

Particulars of Offence

ANGELA ADJEI BOATENG, that you, in February and March 2020, in Accra and within the jurisdiction of this Court, did collaborate with KWABENA ADU-BOAHENE, who held a public office as the Director of the Bureau of National Communications, to dishonestly abuse his office for private benefit in the sum of about Forty-nine Million, One Hundred Thousand Ghana Cedis (GH¢49,100,000.00).

COUNT NINE

Statement of Offence

Obtaining public property by false statements, contrary to Section 5 of the Public Property Protection Act, 1977 (SMCD 140).

Particulars of Offence

KWABENA ADU-BOAHENE, that you, in about February or March, 2020, in Accra and within the jurisdiction of this Court, did, by the representation that you purchased a cyber defence system from ISC Holdings Limited, cause the total sum of about Forty-Nine Million, One Hundred Thousand Cedis (GH¢49,100,000.00) to be given to you, which representation you knew to be false or had no reason to believe to be true.

COUNT TEN

Statement of Offence

Money laundering contrary to Section 1(2) (c) of the Anti-Money Laundering Act, 2020 (Act 1044).

Particulars of Offence

KWABENA ADU-BOAHENE, ANGELA ADJEI BOATENG and ADVANTAGE SOLUTIONS LIMITED that you, in the year 2020 in Accra and within the jurisdiction of this Court, did take possession of a part of the sum of money totalling about Forty-Nine Million, One Hundred Thousand Ghana Cedis (GH¢49,100,000.00), knowing at the time of taking possession that the money was acquired through stealing.

COUNT ELEVEN

Statement of Offence

Conspiracy to commit money laundering contrary to Section 3 of the Anti-Money Laundering Act, 2020 (Act 1044).

Particulars of Offence

KWABENA ADU-BOAHENE, ANGELA ADJEI BOATENG and ADVANTAGE SOLUTIONS LIMITED, that you, in the year 2020 in Accra and within the jurisdiction of this Court, did agree to act together to commit money laundering in the sum of about Forty-Nine Million, One Hundred Thousand Ghana Cedis (GH¢49,100,000.00), belonging to the Republic of Ghana.

In the course of the trial, the charges against the third accused were withdrawn by the prosecution and she was accordingly discharged, the charges against her and for that matter her name on the charge sheet were struck out. She was then used as a prosecution witness and testified as PW3. The amendments were effected by cancelling or drawing ink across her name and signing against same. A4 then became A3.

FACTS

The facts of the case as presented by the prosecution are that; the first accused was, until sometime in February 2025, the Director-General of the National Signals Bureau, a body corporate established by the National Signals Bureau Act, 2020 (Act 1040) to provide integrated secure signals systems for the national security and intelligence agencies, but before becoming the Director-General of the National Signals Bureau, A1 was the Deputy Director and, later, Director of the Bureau of National Communications (BNC), which used to perform the functions now performed by the National Signals Bureau.

As Director of BNC, A1 had the power to spend or authorize spending from the funds of the Bureau of National Communications and that sometime in the year 2020, A1, ostensibly, as part of his functions as the Director of the Bureau of National Communications, purportedly signed a contract on behalf of the Government of Ghana with ISC Holdings Limited, an Israeli Company, to purchase a cybersecurity system for the country at the cost of Seven Million United States Dollars (US$7,000,000.00).

While still the Director at the Bureau of National Communications, A1 together with his wife – 2nd accused (A2) - incorporated a private limited liability company which they carefully styled "BNC Communication Bureau" and that there is a similarity between the name of the private company which A1 and A2 incorporated - "BNC Communication Bureau" - and the name of the public institution of which A1 was the Director - "Bureau of National Communications".

That on February 5, 2020, a cheque with the serial number 020086 and face value of Twenty-Seven Million and One Hundred Thousand Ghana Cedis (GH¢27,100,000.00), on March 18, 2020, a cheque with serial number 020089 and face value of One Million Ghana Cedis (GH¢1,000,000.00) and on March

30, 2020, another cheque with serial number 020094 and face value of Twenty-one Million Ghana Cedis (GH¢21,000,000) were drawn on "The Director BNC" bank account at Fidelity Bank, all to be paid to "BNC Operations". On February 6, 2020, a day after the first cheque was written however, it was presented and paid into a bank account styled "BNC Communications Bureau Limited" - at the Universal Merchant Bank (UMB Bank), the same bank account that the other two cheques with the face value of One Million Ghana Cedis (GH¢1,000,000.00) and Twenty-one Million Ghana Cedis (GH¢21,000,000) were paid into and that in order to get the cheques cleared through the banking system, A1, who paid in the first cheque, cited the purported January 30, 2020, contract with ISC Holdings Limited as supporting documentation.

According to the prosecution, "The Director BNC" bank account (from which the GH¢27,100,000.00, GH¢1,000,000.00 and GH¢21,000,000 were paid belonged to the National BNC, while the "BNC Communications Bureau Limited" (into which the GH¢27,100,000.00, GH¢1,000,000.00 and GH¢21,000,000 were paid belonged to the Private BNC (the "BNC Communications Bureau Limited" which A1 and A2 incorporated). and that A1 subsequently purported to transfer the sum of One Million Seven Hundred and Fifty Thousand United States Dollars (US$1,750,000.00) by wire transfer to ISC Holdings Limited purportedly as 25% part-payment of the sale price of the cyber security defence system and that the total sum of Forty-nine Million and One Hundred Ghana Cedis (GH¢49,100,000.00) - which was paid from the Public BNC "The Director BNC" account to the Private BNC Communications Bureau Limited account was the exact Ghana cedi equivalent of Seven Million United States dollars (US$7,000,000.00), which, according to A1 was the purchase price of the cyber security defence system at the exchange rate at the time of the payments but no cybersecurity system of the description in the January 30, 2020, contract was ever

received by the Bureau of National Communications or by its successor agency the National Signals Bureau or by the Government of Ghana.

That these monies were paid through a complex web of companies, ultimately owned by 3rd accused (A3), a Ghanaian private limited liability company, the sole shareholder of several other private limited liability companies, including "BNC Communications Bureau Limited" and has A2 as its sole shareholder, with A2 as a director and that the monies which A1 and A2 moved from the National BNC's bank account into the Private BNC bank account were used to purchase and construct various landed properties located in Accra, Kumasi and London, to buy a fleet of luxury cars and to fund the lavish lifestyle of the couple and their friends.

According to the prosecution, A1 and A2 therefore run an elaborate criminal enterprise using A3 as a holding company through which the stolen funds were funneled and laundered for their own benefit and that as the holding company of a number of subsidiary companies, including the Private BNC, A3 received a substantial portion of the stolen funds which were then invested by its shareholders and directors in the business activities of the subsidiaries, including investments, treasury bills, real estate, the manufacturing of fertilizer and the rental of luxury cars to VIP customers.

On 20/03/25 and 21/03/25 A1 and A2 were arrested and subsequently arraigned before this court on the charges for which they are now standing trial.

At the close of the prosecution's case, counsel for the accused persons made a submission of no case to answer application. On 25th September, 2026 counsel for the accused persons filed his submissions in support of the application. The prosecution also filed its written submissions in opposition to the application on

9th October, 2026 and counsel for the accused persons filed a reply to same on 19th October, 2026.

THE LAW ON SUBMISSION OF NO CASE TO ANSWER

Section 173 of The Criminal and Other Offences (Procedure) Act, 1960 (Act 30) provides that where at the close of the evidence in support of a 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. Section 174 of Act 30 requires the court to call on the accused to make a defence if it appears to the court a case is made out against the accused sufficiently to require the accused to make a defence.

It would appear from sections 173 and 174 of Act 30, the determination does not necessarily have to be a reasoned ruling. Under section 5(2)a of the Practice Direction- Disclosures and Case Management in Criminal Proceedings, 2018 however, the determination has to be a reasoned ruling. The said section provides as follows;

> *"At the close of 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 as to require the accused person to open his defence."*

Thus, at the close of the case for the prosecution the court is mandated, either Suo moto or upon an application to make a determination on whether or not the prosecution has led sufficient evidence against an accused person on each count to require an accused person to open his defence and this determination must be by a reasoned ruling.

It is not an unusual practice for an accused person to make arguments at the close of the case of the prosecution in support of a submission that the prosecution failed to make a case against the accused that requires the accused to be called upon to open a defence. That is what Counsel for the accused persons has done in this case. There is clear jurisprudence in our jurisdiction that dictates the approach a judge ought to adopt in determining a submission of no case and I would guide myself with the decided cases.

The most concrete guide is that contained in a practice note issued by the Queen's Bench Division per *Parker LCJ, Ashworth and Fenton Atkinson JJ in (1962) 1 all ER 448,* which was adopted by our Supreme Court in the cases of *The State v. Ali Kassena [1962] 1 GLR 144 at page 48 and Apaloo & ors vs. The Republic [1975] 1 GLR 156.* The Said guide is as follows;

"A submission that there is no case to answer may properly be made and upheld:

When there has been no evidence to prove an essential element in the alleged offence,

When the evidence adduced by the prosecution has been so discredited as a result of cross examination or is so manifestly unreliable that no reasonable tribunal could safely convict on it.

Apart from these two situations, a tribunal should not in general be called on to reach a decision as to conviction or acquittal until the whole of the evidence which either side wishes to render has been placed before it. If, however, a submission is made that there is no case to answer, the decision should depend not so much on whether the adjudicating tribunal (if compelled to do so) would at that stage convict or acquit but on whether the evidence is such that a reasonable tribunal might convict. If a reasonable tribunal might convict on the evidence so far laid before it, there is a case to answer."

The principles stated above were restated by our Supreme Court in the recent case of *Michael Asamooah & Anor v. The Republic (criminal Appeal No. J13/4/2017) delivered on 26th July, 2017* in the following terms;

"a) there had been no evidence to prove an essential element in the crime

b) the evidence adduced by the prosecution had been so discredited as a result of cross examination: or

c) the evidence was so manifestly unreliable that no reasonable tribunal could safely convict upon it

d) the evidence was evenly balanced in the sense that it was susceptible to two likely explanations, one consistent with quilt, and one with innocence.

It is therefore clear that at the submission of no case to answer stage the prosecution is not required to proof the guilt of the accused beyond reasonable doubt – see the dictum of prof. Ocran, JSC in the case of *Tsatsu Tsikata v. The Republic [2003-2004] SCGLR 1068*

There is also the admonition and caution of Taylor J (as he then was) in the case of *Republic v. Accra Special Circuit court; Ex parte Akosah (1977) 2 GLR 283* to the effect that a trial judge does not have to make findings of fact in a ruling on a submission of no case to answer. I have taken due notice of the principles stated above as I consider the submission made by the accused persons in this case.

In order to discharge the burden of proof cast upon it, the prosecution called four witnesses in support of its case.

PW1 is a driver who also run errands for A1 and PW3. PW2 is the financial director of the then Bureau of National Communication (BNC), now National Signals Bureau. PW3 was a director of A3 and some of its sister companies and at all material times acted on the instructions of A1 and A2. PW4 was the lead investigator, who investigated the case and a staff of the Economic and Organised Crime Office (EOCO).

The evidence of PW1 is that he used to go to UMB Bank Labone branch to withdraw money upon the instructions of PW3 and that each time he withdrew the money, which he carried in 'Ghana must go' bags, he sent the money to A1, even though there were occasions he gave the money to PW2 and that he is not a staff of National security and never worked there.

PW 2's evidence is that the Bureau of National Communications (BNC) operated three accounts: the one domiciled at the Bank of Ghana and two operational accounts, one at Bank of Ghana and the other at Fidelity Bank, opened by the late Joshua Kyeremeh, the then National Security Coordinator. She testified that, the reason why the account was opened by Joshua Kyeremeh is because BNC was not autonomous at the time but that, it did not make the account not to be BNC's account. PW2 further testified that the source of funds for the operational accounts at Bank of Ghana and Fidelity Bank were diverse, and that A1 together with the late Joshua Kyeremeh and Seth Danso, Director of Finance at National Security, were signatories to the Director BNC account at Fidelity Bank. PW 2 also testified that she would know about any account belonging to BNC, but the purpose of the funds, if for special operations, she will not know.

PW2 gave evidence that she was instructed by A1 to write the cheques of GH¢27,100,000, GH¢1,000,000 and GH¢21,000,000 which she did and gave them to him for necessary signature and that after signature, she was given an account number by A1 to pay the cheques into, with the payee's name being BNC

operations. These cheques were confirmed by PW2, who further testified that she will not be aware whom the payee "BNC operations" on the cheques belong to, but that at the time of writing the cheques, she assumed it was an operational account which she did not have clearance to know and that, at her level there are some national security special operations accounts that she did not have clearance to know.

PW2 also testified that the three cheques she wrote, which A1 signed, were paid into the BNC operations account at UMB Bank, and that A1 used to send her to collect money from that account for him in cash in 'Ghana must go' bags.

According to PW2, money that they used before budgetary releases were outside government sources, but such money would be refunded to the said sources since the entity is a state entity and that A1 did some pre-financing of some of their activities.

PW2 also gave evidence to the effect that invoice numbers NSC 006 issued for the digitized investigative auditing system and invoice number NSC 006 for the cyber defence system should not have been so because that was not possible, as in accounting and invoicing practice you do not have two different invoices with the same invoice number and so one of them would have been issued in error.

PW3's evidence is that she was acting on daily instructions from A1 and A2 by making withdrawals, payments and sending of emails to enable payments and withdrawals to be made, and that she was a director of A3, Vertex Properties, Vertex Solutions, Securigence Limited, Enterprise Dream Collection, Food Plan, and Urban Kids; all belonging to A1 and A2. That the instructions were for her to effect transfers either between accounts or to third parties via emails, and then cheque withdrawals and payments. According to PW3, at times she sends PW1

and PW2 to effect the withdrawals A1 and A2 instructs her to effect, if she is not able to go and that if it was by cheque, it is PW1 and mostly by email if it is PW2.

PW3 also gave evidence to the effect that she made payments, withdrawals, and transfers from the UMB Bank BNC account to A3, Vertex Properties and Solutions for effective withdrawals and payments to be made as cheques for BNC Ltd at UMB Bank were not ready, and that the withdrawals were done by herself, PW1 and PW2, which were later sent to A1 and sometimes A2, and third parties, and that some of the third parties, the payments were made to where people they were buying stuff from because they were also building; like iron rods and cement companies, and that they also made payments to Madam Margaret Abba Donkor, who is A1's mother, and that her understanding is that the monies sent to her were for construction of a project in Kumasi, Asokori, and that she was dealing with her in terms of the purchasing of building materials for the project.

PW4, as indicated, is the lead investigator who investigated the case. His evidence is that sometime in March 2025, EOCO received a tip-off indicating that there has been a huge misappropriation of public funds at the National Signals Bureau, then known as the Bureau of National Communications (BNC) in 2020. The tip-off, according to him, was to the effect that A1, in his capacity as the director of Bureau of National Communications (BNC), transferred a total amount of GHC 49,100,000 from the account of the Bureau of National Communications at Fidelity Bank, with the account number 1070030677849, into a private limited liability company known as BNC Communications Bureau Limited account at Universal Merchant Bank (UMB Bank) with the account number 0241424233018 and that the account into which the funds originated from belonged to the Bureau of National Communications, which was usually abbreviated as BNC, whereas the private limited liability company belonging to A1 and A2, which received the funds, had the acronym of the state's BNC as the

first name, and also had names such as "communications" and "bureau", which were also found in the full name of the state's Bureau of National Communications, and that from his experience, similarity in names such as this is always misleading, and transactions or dealings in respect of these companies can be fraudulent.

According to PW4, acting on the tip-off, they made a request to the Fidelity Bank for the account information of the Bureau of National Communications account. The bank furnished them with the bank records, which included cheques drawn on the account. PW4 testified that they observed that three cheques signed by A1 in his capacity as the then director of Bureau of National Communications were drawn on the Fidelity Bank account and same deposited in the private BNC Communications Bureau Limited account and that, the first cheque dated 5th February 2020, with the face value of GH¢27,100,000 was drawn on the account, and same deposited by A1 on 6th February 2020 into the private limited liability company, BNC Communications Bureau Limited account at UMB Bank. PW4 further testified that the payee name on the cheque drawn on the Bureau of National Communications account is different from the name on the UMB Bank deposit slip, that, the payee name on the cheque is BNC-Operations, whereas the name A1 wrote on the deposit slip is BNC Communications Bureau Limited – operations and that the similarities in names was misleading and could easily lead to fraudulent transactions, and that from his experience as an investigator, payee names on cheques usually correspond with the name on the deposit slip, but that was not the case for these cheques. According to PW4, A1 signed the first cheque in his capacity as the then director of Bureau of National Communications, and in depositing the cheque into the private limited liability company where he served as a director, did not write the exact name on the cheque on the deposit slip, which, from his experience as an investigator, was to conceal the transaction, and that he found it intentional, bearing in mind the similarities in the two names.

PW4 also testified that A1 signed two other cheques dated 18th March 2020 and 30th March 2020, which were also drawn on the Fidelity Bank account of the Bureau of National Communications and deposited on same date into the private limited liability company, BNC Communications Bureau Limited account at UMB Bank.

PW4 gave evidence to the effect that, in order to identify the ownership of the bank accounts, they requested for bank records from Fidelity Bank and UMB Bank, and that from the account opening documents on the Bureau of National Communications account with Fidelity Bank, they found out that the account was opened in May 2017 by the National Security Council Secretariat, authorized by the National Security Coordinator, and that the account was assigned the name, "the Director BNC" and given the account number 1070030677849, and that the signatories to the account were A1, the National security coordinator and one other person, with the mandate on the account being A1 and either the national security coordinator or the other person. According to PW4, they then proceeded to obtain the bank records of the Private BNC Communication Bureau Limited from UMB Bank, and that from the account opening documents, they observed that the account was opened on 5th February 2020, the same date that A1 signed the first cheque that was drawn on the director BNC account at Fidelity Bank. PW4 testified that this BNC Communication Bureau Limited account at UMB Bank was opened by A1 and A2 at the Labone branch of UMB and was assigned account number 0241424233018, with A1and A2 being the signatories, and that in order to ascertain the ownership of BNC Communication Bureau Limited, they requested for the incorporation documents of the company from the Office of the Registrar of Companies, and that from the incorporation documents they observe that the company was incorporated on 23rd October 2018, with A1 and A2 listed as the directors and A3 listed as the sole shareholder.

PW4 further testified that there is a section of the incorporation documents where the office of the Registrar of Companies by law mandates the directors of the company to name the ultimate beneficial owner of the company and that in respect of BNC Communication Bureau Limited, A2 was listed as the beneficial owner of the company, with A3 listed as the sole shareholder of BNC Communication Bureau Limited and A3 in turn has A2 as its sole shareholder and beneficial owner.

PW4 also testified that the investigation team interrogated A1 and A2 on these company documents and bank accounts, but that A2, despite being listed as beneficial owner of BNC Communication Bureau Limited and also a signatory to the account with UMB, denied knowledge of BNC Communication Bureau Limited in a statement provided to the investigators and that they also questioned the head of finance of the then Bureau of National Communications, PW2, as part of their investigations, who indicated to them that BNC Communication Bureau Limited account with UMB was not part of the bureau's bank accounts, and that she indicated that although she deposited the two cheques dated 18th March, 2020 and 30th March 2020, into the private BNC Communication Bureau Limited account at UMB, she did not know the purpose for the transaction and that she acted only on the instructions of A1, her boss.

According to PW4, they analyzed the bank statements of BNC Communication Bureau Limited account number 024142423308, and found out that on 6th February, the same date, the first cheque of GH¢27,100,000 was deposited, an amount of GH¢9,537,500 Ghana Cedis was transferred to a company called ISC Holdings, and when they obtained the transactional details of this transfer, being the SWIFT message dated 7th February 2020, which contains instructions provided by A1 to the bank as the purpose and destination of the transfer of

GH¢9,537,500, they observed that the amount was equivalent to 1,750,000 USD, which was being sent to ISC Holdings in Israel, and that the purpose of the transfer as per the remittance information on the swift message was for the procurement of cyber defence system with invoice number NSC 006 and that, when they requested documents covering the transaction from UMB Bank, a contract agreement dated 30 of January 2020 and an invoice number NSC 006 was furnished them. According to PW4, the contract agreement dated 30 of January 2020 was for a purported purchase of a cyber defence system signed by A1 and that together with the invoice number NSC 006 were presented to the bank by A1 and same was the basis of the transfer of 1,750,000 USD to ISC Holdings.

PW4 testified further that they made a request to the National Signals Bureau to ascertain whether they have in their records the NSC 006 invoice for procurement of a cyber defence system, and from the response received from the bureau, they furnished investigations with another invoice numbered the same NSC 006 and also another invoice number 31, and that the bureau's invoice numbered NSC 006 was different from the invoice NSC 006 A1 presented to UMB Bank for the transfer of 1,750,000 USD to ISC Holdings and that the bureau's invoice number NSC 006 is dated 30th March 2020, and was for a single purchase of a digitized investigative auditing system, whereas A1 invoice number NSC 006 was for the procurement of a cyber defence System; as such, there could not have existed NSC 006 before this date, 30th March 2020, and that A1's invoice NSC 006 presented to the bank is fake and that from investigations, there cannot exist the same invoice numbers for the purchase of different items within the National Signals Bureau, whose records show there is an invoice number 31, which is for procurement of cyber defence system.

PW4 also testified that upon the analysis of the bank statement of BNC Communication Bureau Limited, they realized that after the transfer of the GH¢9,537,500 from the account on 6th February 2020, the following date, 7th February 2020, A1 commenced withdrawals and transfers from the account, and between this date, 6th February 2020 to 5th August 2020, huge sums of monies were withdrawn from the account or transferred from the account to the benefit of A1 and other parties, and that as at 5th August 2020, the balance on the account was just about the sum of GH¢600,000 and that within six months, A1 and A2 had dissipated almost all the funds in the account.

The witnesses were cross examined by counsel for the accused persons and as to whether the answers to the questions posed in cross examination destroyed the credibility of the testimonies of the witness I shall deal with that hereunder as I consider counts below;

COUNT 1

On count 1, A1 is charged with the offence of stealing GHC 27,100,000 belonging to the Republic of Ghana with the intent of depriving the Government of Ghana the said amount under section 124(1) of the criminal Offences Act, 1960 (Act 29).

The subject matter of the thing allegedly stolen must be one that is capable of being stolen under section 123 of Act 29, even if its value does not amount to the value of the lowest denomination of coin. The subject matter of the thing for which A 1 is charged under count 1 is a sum of money, and same is a thing that is capable of being stolen.

Section 125 of Act 29 defines stealing in the following terms;

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

By the definition of stealing, the elements/ingredients of stealing are that;

1. there has been an appropriation of a thing
2. the appropriation is dishonest
3. the accused person is not the owner of the thing appropriated or that it belonged to another person.

See the case of *Ampah v. The Republic [1977] 2 GLR 171, CA* and *Lucien v. The Republic [1977] 1 GLR 351.*

under section 120 of Act 29, dishonest Appropriation of a thing entails;

a. an appropriation that is made with intent to defraud, or
b. where it is made without a claim of right in good faith, or
c. where it is made without the owner's consent.

It is therefore sufficient to show that an accused person was not the owner of the thing and that he appropriated the thing with either an intent to defraud or without claim of right to the thing in good faith or without the consent of the owner.

What does "appropriation" mean then?

By section 122 of Act 29, an appropriation of a thing 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."*

Thus, in this case, the ingredients/elements of the offence charged under count 1 are that;

1. A1 appropriated the sum of GH¢27,100,000
2. the appropriation was dishonest
3. the amount of GH¢27,100,000 belonged to the Government of Ghana

At the close of the prosecution's case, therefore, the prosecution should be able to lead sufficient evidence in support of each of these elements/ ingredients stated above, if it is to avoid the submission of no case to answer being upheld. It is important to restate that the standard of proof on the prosecution at this stage is not to proof the guilt of the accused persons beyond reasonable doubt.

OWNERSHIP OF THE MONEY

The prosecution's case is that the money involved in this case is money of the Government of Ghana. To prove this, they introduced Exhibit 5 Series (5f) to show that the account at Fidelity Bank was opened at the request of the National Security Coordinator by letter dated 31st May 2017. The request was for an additional account to be opened in the name of the Director BNC. The account was subsequently opened on the said instructions, and by exhibit 5 series (5e), which is a statement of account in respect of the said account numbered 1070030677849, an amount of GH¢27,657,000 was on 30th January, 2020 deposited into the account from the Bank of Ghana. Again, on 20th March 2020, an amount of GH¢26,674,500 was deposited into the account from the Bank of Ghana. Also, by Exhibit 35, Fidelity Bank, on the third page of the said exhibit wrote admitting receipt of the above sums and that they were received in favour of the Director BNC account from their own account held at Bank of Ghana; except that the date of the second deposit was wrongly indicated as 30th March 2020 instead of the 20th March 2020 date reflected in Exhibit 5 series (5e).

The ownership of the account, that is the Director BNC account, held at Fidelity Bank has become a contentious issue, with the prosecution claiming The Bureau of National Communications, now the National Signals Bureau, is the owner of the said account, whilst the accused persons contend through cross examination that the National Security coordinator, and for that matter the National Security Council Secretariat, is the owner of the said account. Whichever way the matter

is looked, at this stage the prosecution has led sufficient evidence on their contention that the money did belong to the Government of Ghana. It is for the accused to adduce evidence in support of their contention in order for the court to decide one way or the other.

APPROPRIATION

The prosecution is required, having regard to the charge of stealing, to proof appropriation of the money in the accounts. In this regard they tendered exhibits T, T1, T2, T3 and T4. By Exhibit T, A1 and A2 wrote a letter dated 5th February, 2020 to the manager, Universal Merchant Bank, Labone Branch, requesting the opening of an additional account under the B.N.C Communication bureau Ltd account, to be named B.N.C Communication Limited- Operations. By Exhibits T3 and A4, the account opening form for B.N.C Communication Limited-Operations was signed by A1 and A2, and they are the signatories to the account.

From the evidence of PW2, she wrote the cheques on the instructions of A1 and that, after she wrote the cheques, A1 signed them. From Exhibits S and S1, being the cheque for the sum of GH¢27,100,000 and the deposit slip in respect of the said cheque respectively; it is obvious that A1, as director of the Bureau of National Communications (BNC), signed Exhibit S and from Exhibit S1, the deposit slip indicates that the payment/deposit of the cheque was made by A 1 into the B.N.C Communication Bureau Limited /B.N.C Communication Limited-Operations account and even though Exhibit S had "BNC- Operations" as the payee, in depositing the said cheque as per Exhibit S1, A1 wrote "BNC Communications Bureau Ltd" as the account name into which the cheque of GHC 27,100,000 as per Exhibit S was to be deposited instead of the payee on the said cheque, being BNC- Operations.

The accused persons' lawyer challenged the testimonies of the witnesses under cross examination but their testimonies were not thereby made improbable. The evidence is sufficient for the accused persons to explain what they know about the matters talked about by opening their defence.

Again, by Exhibits U, Y and Y1, after the money was deposited into B.N.C Communication Bureau Limited- Operations account, withdrawals were made by either A1 himself or PW1, PW2 and other third parties at the instance of A1. Indeed, PW1 and PW2 testified that they made withdrawals in cash, and same handed over to A1.

It is true that PW2 admitted under cross examination that A1 pre financed some of their operations (BNC), but she did not say that the pre financing that was talked about was the sum of GH¢27,100,000 that was moved from the state account at Fidelity Bank to the private limited liability company- B.N.C account at UMB Bank. If that is the case of the accused persons, then they need to open their defence and adduce the evidence.

I am satisfied from the analysis of the evidence above that the state has led sufficient evidence in support of the claim or allegation that A1 appropriated the sum of money belonging to the state, which appropriation deprived the state of the benefit of that money. The prosecution's evidence is that the appropriation was not for the benefit of the state and when the involvement of A2 in the handling of the money is looked at, the prosecution case that the appropriation was dishonest requires answers from the accused persons by opening their defence.

I also find that the evidence of the prosecution has not been so discredited as a result of cross examination and neither is same manifestly unreliable.

I am therefore satisfied that the prosecution has succeeded at the close of its case in establishing a prima facie case against A1 on count 1 to warrant A1 being called upon to offer an explanation, and for that matter, to open his defence on count 1. The application that A1 has no case to answer on count 1, therefore fails, and same is dismissed.

COUNT 2

Under this count, A1 is charged with stealing GH¢1,000,000 belonging to The Republic of Ghana with the intent of depriving the Government of Ghana the said amount under section 124(1) of the criminal Offences Act, 1960 (Act 29).

Since the charge under this count is one of stealing, just like the charge under Count 1, save the amount involved, i adopt and rely on the law as I stated supra regarding the elements that the prosecution is required to prove. This means that the elements of the offence under count 2 that sufficient evidence ought to have been adduced at this stage are as follows;

1. that A1 appropriated the sum of GH¢1,000,000
2. that the appropriation was dishonest
3. that the amount of GHC 1,000,000 belonged to the Government of Ghana

By Exhibit 5 series (5e), the Director BNC account was on 18th March, 2020 debited with the sum GHC 1,000,000 being a cheque drawn on its account. On the same day the cheque was deposited into the B.N.C communication Bureau Limited- operations account by PW2 as per the deposit slip- Exhibit 9. The same amount is reflected in B.N.C communication Bureau ltd/ B.N.C Communication Ltd- Operations account- Exhibit U on the same 18th March 2020 after the deposit by PW2. From Exhibit U, on the same day the cheque of GHC 1,000,000 from the Director BNC account was deposited into the B.N.C Communication Bureau

ltd- operations account, being 18th March, 2020, GH¢900, 000 out of the GH¢1,000,000 was withdrawn by A1. On the same day A1 deposited GH¢ 600,000 out of the GH¢900,000 into the account of A3- Exhibit 15. Per the same Exhibit 15, two days after depositing the GH¢600,000 into A3's account, that is 20th March, 2020, A1 withdrew a sum of GH¢243,900 from A3's account. On 31st March, A1 again, withdrew GH¢400,000 from the same account.

The case of the prosecution is that The National Security Council is a state institution, so are its arms, agencies or departments and to that extent the money in the Director BNC account- Exhibit 5 series (5e) is presumed to belong to the Sate and for that matter the Republic of Ghana. The prosecution contends on the basis of the documents tendered in evidence that the GH¢1,000,000 taken or moved from the Director BNC account is State money. Accordingly, there is sufficient evidence, at the close of the prosecution's case to support the prosecution's claim that the GH¢1,000,000 belongs to the Republic/Government of Ghana and that it was appropriated by A1. Additionally, the prosecution's case is that moving the money to a private account and cashing it out was dishonest appropriation. In my view the prosecution has introduced sufficient evidence against A1on count 2 to warrant him being called upon to answer.

COUNT 3

On this count, A1 is charged with stealing GH¢21,000,000 belonging to The Republic of Ghana with the intent of depriving the Government of Ghana the said amount under section 124(1) of the criminal Offences Act, 1960 (Act 29).

Since the charge under this count is also one of stealing, just like the charges under counts 1 and 2, save the amount involved, I similarly adopt and rely on the law I stated above which when applied to this Count means that the prosecution is required to adduce sufficient evidence on the following;

1. that A1 appropriated the sum of GH¢21,000,000
2. that the appropriation was dishonest
3. that the amount of GH¢21,000,000 belonged to the Government of Ghana

By Exhibit 5 series (5e), the Director BNC account was on 20th March, credited with the sum of GH¢26,674,500 being clearance of a cheque from Bank of Ghana (National Security Coordinator account), bringing the total balance on the account to GHC 26,698,119.87. On 30th March, 2020, A1 and the then National Security Coordinator signed a cheque in the sum of GH¢21,000,000- Exhibit 5 series (5b) to be drawn on the Director BNC account with the payee being "BNC OPERATIONS" and by a deposit slip, Exhibit 10, this cheque was deposited by PW2 not into the account Named BNC operations as is reflected on Exhibit 5 series (5b) but into an account numbered 02414233018, which by Exhibit T3 and T4 belong to "B.N.C Communication Limited- Operations". On 31st March, 2020, the account of the Director BNC was debited with the amount of GH¢ 21,000,000 being the cheque drawn on that account as per exhibit 5 series (5b). This amount of GH¢21,000,000 drawn on the Director BNC account is reflected as a credit transaction or entry dated 30th March, 2020 in Exhibit U, being the bank/account statement of B.N.C Communication Limited- Operations, bringing the total balance on this account to GH¢21,101,648.25 as of 30th March, 2020. This will mean the balance on the account- Exhibit U was GH¢101,648.25 before the GH¢21,000,000 drawn on the Director BNC account was deposited into the account.

After the deposit of the GH¢21,000,000 into the account- Exhibit U, on the second day of the deposit, being 1st April, 2020, an amount of GH¢500,000 was transferred to A3's account- Exhibit 15 and same is reflected in the transaction or entry of 1st April, 2020 on Exhibit 15. Indeed from 1st April, 2020 to 30th July, 2020, the GH¢21,000, 000 was almost used up and by 3rd August, 2020, the

balance on the account was GH¢683,609.65 and almost all the money was withdrawn by A1 or transferred to A3's account by A1 and a few transfers to sister companies of A3 and by Exhibit Y, some of the transfers to A3 were either withdrawn by A1 on the same day or proximate days and either entire sums transferred were withdrawn or a little smaller or higher amounts than what was transferred, were withdrawn by A1 or PW1 and PW2, who testified that they did so at the instance of A1. Also see Exhibit 15. Again, by Exhibit Y1, cash withdrawals were made by A1, PW1, PW2 and other third parties on the account, including those made after 30th March, 2020 which had no corresponding forwarding deposits.

The evidence at this stage has an amount of GH¢7,250,000 on Exhibit U on 3rd April, 2020 withdrawn by A1 into his personal account- Exhibit 7 and on 6th April, 2020, GH¢7,200,000 returned or paid into the Director BNC account, which is alleged to be a pre-financing of some activities by A1. At this stage I do not need to resolve that factual issue since even if that money is deducted the evidence through the documents I have referred to above still point to a balance that was taken out of the account which the A1 would need to give an answer to. Consequently, the prosecution has introduced sufficient evidence on Count 3 to require A1 to be called upon to answer.

COUNT 4

Under this count, A1 and A2 are charged with conspiracy to steal the sum of GH¢49,100,000 belonging to The Republic of Ghana with the intention of depriving the Government of Ghana of the said sum contrary to sections 23(1) and 124(1) of the criminal offences Act, 1960 (Act 29).

For some time now in our jurisdiction the legal profession has been grappling with two statutory definitions of Conspiracy. One in the original text of the Criminal Offences Act, 1960 (Act 30) which is as follows;

Section 23 of Act 29:

> *"If two or more persons agree or act together with a common purpose for or in committing or abetting a crime, whether with or without any previous concert or deliberation, each of them is guilty of conspiracy to commit or abet that crime as the case may be."*

The other in the New Revised Edition of Statutes of Ghana under the Criminal and Other Offences Act, 1960 (Act 29) which was prepared by the Statute Law Revision Commissioner. It is as follows;

> *"Where two or more persons agree to act together with a common purpose for or in committing or abetting a criminal offence, whether with or without a previous consent or deliberation, each of them commits a conspiracy to commit or abet the criminal offence."*

The difference between the two is that whereas in the original text it is stated that "agree OR act together" the new statute has it as "agree TO act together".

In the case of *Francis Yirenkyi v. The Republic [2017-2020] 1SCGLR 433,* the Supreme court upheld the definition of Conspiracy as contained in the New Edition and stated that in proving the offence of Conspiracy there was the need to prove a prior agreement by two or more persons to Act together to commit the crime or abet its commission.

However, agreement to commit a crime does not mean evidence of deliberations by the persons involved, discussing the commission of the crime.

In *R v Brisac (1803) 102 ER 792 at 795*, Grose J, said *"conspiracy is a matter of inference deduced from certain Criminal acts of the parties accused done in pursuance of an apparent Criminal purpose in common between them.*

Thus, conspiracy may be inferred or deduced from the conduct of accused persons undertaken in pursuit of a common criminal agenda.

In this case, the issue is whether or not at the close of the prosecution's case, it can be inferred that A1 and A2 conspired to steal the sum of GH¢49,100,000 belonging to the Government of Ghana.

The prosecution led evidence through Exhibits T, T3 and T4 to say that A2 consented and participated in the opening of an account known as B.N.C Communication Limited- Operations with account number 0241424233018 owned by her company A3, which was used by A1 to deposit the three cheques drawn on the Director BNC account at Fidelity Bank, totalling GH¢49,100,000. When the monies were lodged in the account, much of it was taken by A1, who subsequently deposited or transferred some to A3's account. A2 who from the evidence is sole shareholder of A3 and a director allowed the monies to be taken out of that account. The prosecution introduced evidence showing that some of the money was even transferred to Vertex Solutions Limited, where A2 is a director. The prosecution led evidence and contend that on 3rd August, 2020 and 13th August, 2020, A2 withdrew GH¢25,000 and GH¢10,000 respectively from the vertex solutions account- see Exhibit 17 and Y, at a time the only money in vertex solutions account was the GH¢200,000 withdrawn from Exhibit U by A1 and same deposited into vertex solutions account on 29th June, 2020.

The evidence led so far suggest an agreement between A1 and A2 to steal the amount involved. A1 and A2 therefore need to explain themselves in their defence.

COUNT 5

Under this count, A1 is charged with defrauding by false pretences, contrary to section 131(1) of the Criminal Offences Act, 1960 (Act 29). A1 is alleged to have, by false pretence, represented that he was going to buy a cyber security system for The Republic of Ghana, thereby causing the Government of Ghana to part with the sum of about GH¢49,100,000, belonging to the republic of Ghana.

The offence creating section in respect of which A1 is charged under this count is section 131(1) of the criminal offences Act, 1960 (Act 29). The section provides as follows;

> *"A person who defrauds any other person by a false pretence commits a second degree felony"*

Section 132 defines defrauding by false pretence as;

> *"A person defrauds by false pretence if, by means of a false pretence, or by personation that person obtains the consent of another person to part with or transfer the ownership of a thing."*

Section 133 of Act 29 defines a false pretence in the following terms;

> *"A false pretence is a representation of the existence of a state of facts made by a person, with the knowledge that the representation is false or without the belief that it is true, and made with an intent to defraud."*

From the above definitions, it is clear that the essential ingredients/elements of the offence charged are;

1. that A1 made a representation either orally or in writing, of the existence of a state of facts, to wit; that he was going to buy a cyber security system for The Republic of Ghana
2. that the representation was made by A1 with the knowledge that the representation was false or without the belief that it was true.
3. that A1 made the representation with an intent to defraud.
4. that A1 through the said representation, obtained the consent of The Government of Ghana to part with or transfer the ownership of the sum of about GH¢49,100,000.

See the Court of Appeal case of *Daniel Kwasi Abodakpi v. The Republic [2008] 15 M L R G 141. (Suit No. H2/22/05) delivered on 09/03/06*

Accordingly, the prosecution at the close of its case must lead evidence in support of each of the above elements of the offence charged, in order to successfully establish a prima facie case against A1 on this count.

From the evidence on record, none of the prosecution witnesses in their evidence in chief testified as to a representation made by A1 or the nature of any such representation that enabled him move the money from the Director BNC account to a private limited liability company account known as B.N.C Communication Bureau Limited or B.N.C Communication Limited- Operations. Thus, in their evidence in chief, they did not testify that A1 made a representation that he was going to buy a cyber security system for The Republic of Ghana. In fact, by the nature of the case of the prosecution, A1 was fully in control of the funds involved and he did not seek approval from any higher authority in moving the money, save that the cheques were signed by him and the then national security coordinator, which would have required him to state a purpose for the movement of the monies. If that had been the case and A1 made a false representation upon which approval was given then one may talk about defrauding by false pretences

but since the case of the prosecution seem to suggest that, A1 was basically dealing with himself, that charge does not arise. Consequently, A1 is acquitted and discharged on Count 5.

COUNT 6

A1 has been charged with the offence of wilfully causing financial loss to the state, contrary to Section 179A (3)a of the Criminal Offences Act, 1960 (Act 29) on Count 6.

Section 179A (3)a of Act 29 provides as follows;

A person commits a criminal offence through whose wilful, malicious or fraudulent action or omission the Republic incurs a financial loss.

In the case of *Daniel Kwesi Abodakpi v. The Republic [2008] 15 M L R G 141.* The Court of Appeal laid down the legal criteria that the prosecution must establish in a charge of causing financial loss to the state to include;

1. that there must be an actual verifiable loss

2. that the loss must be suffered specifically by the state

3. that the loss must be directly caused by the action or omission of the accused and

4. that the accused must have intended the loss, foreseen it as a probable consequence and taken an unreasonable risk, or would have foreseen it had they exercised reasonable caution.

In this case, I have already held under Counts 1, 2, and 3 that there is evidence adduced of movement of the monies subject matter of the three cheques in the sums of GH¢27,100,000, GH¢1,000,000 and GH¢21,000,000 (which totalled

GH¢49,100,000), from the Director BNC account to the private limited liability company account- B.N.C Communication Bureau Limited or B.N.C Communication Limited- Operations account by A1. Those monies the evidence shows belong to the state of Ghana but they were lost to the state. The evidence also is to the effect that A1 deliberately moved these monies and caused them not to be used for the purpose/benefit of the state.

I note that by Exhibit 40A, which is a letter from I.S.C Group responding to Exhibit 40, being a letter written to I.S.C Holdings ltd by counsel for the accused persons, I.S.C Group admitted issuing invoice No. NSC 006 dated 2nd January, 2020 (Exhibit 11) and confirmed that they have received full payment in respect of that invoice and the one for Digitized Investigative Auditing System and that both equipment have been delivered to the national security of Ghana. But the prosecution also tendered the inventory of the National Signals Bureau, formerly BNC as Exhibit AJ and the inventory does not include a cyber defence system. That being the case, there is a triable issue as to whether the cyber defence system was delivered or not and same should be resolved at the end of the trial and cannot be determined at this stage- see *Tsatsu Tsikata v. The Republic (supra)*

Having found that the Prosecution at the close of its case has led sufficient evidence in support of the charges of stealing under Counts 1, 2 and 3, thereby establishing a prima facie case against A1 on each of those counts, it follows, on the authority of *Mallam Ali Yusuf Issah v The Republic [2003 – 2004] SCGLR 174* that dishonest/fraudulent conduct of A1 has automatically been fulfilled by the prosecution at a prima facie level. As such there is evidence in support of the charge of causing financial loss to the state and A1 shall open his defence to the charge.

COUNT 7

Under this count, A1 is charged with the offence of using public office for profit contrary to section 179C (a) of the Criminal Offences Act, 1960 (Act 29). A1 is alleged to have dishonestly abused his office for private benefit in the sum of GH¢49,100,000 while holding a public office of Director of the Bureau of National Communications.

Section 179C (a) of the Criminal Offences Act, 1960 (Act 29) provides;

A person commits a criminal offence who while holding a public office corruptly or dishonestly abuses the office for private profit or benefit.

The elements of the offence as charged are;

1. that A1 held a public office at the time of the alleged commission of the offence
2. that A1dishonestly abused that office (his office)
3. that A1 abused his office for private benefit

At the close of the prosecution case, it must lead sufficient evidence in support of each of the elements of the offence stated above, if it is to succeed in establishing a prima facie case against A1 on this count.

It is not disputed that the office of the director of the then Bureau of National Communications (BNC) is a public office.

The evidence led so far is that A1 had access to the funds involved in this case by virtue of his position as a director in the public office of Bureau of National Communications or National Signals Bureau and that it was in that capacity that he moved the funds into the private accounts. Since I have held that there is

evidence in support of the substantive Counts 1, 2, and 3 it is equally my view that there is sufficient evidence in support of Count 7.

Is there evidence to show that the money was used for the private benefit of A1?

There is evidence on the record to the effect that on 7th April, 2020 A1 withdrew GH¢630,000 from account number 0241424233018 at UMB Bank and deposited or transferred GH¢530,000 of it into A3's account and on the same day A2 withdrew GH¢50, 000 and GH¢300,000 from A3's account.

It has to be noted that A2 is the wife of A1 and so A2 qualifies to be an associate of A1. Since the monies from the Director BNC account were moved to an account of a company in which A2 is not only a director but a beneficial owner of the said company and also a beneficial owner of the sole shareholder (A3) of that company that evidence is sufficient evidence to indict A1 of personally benefiting from the monies taken.

The submission of no case to answer on count 7 fails and same is dismissed. A1 is therefore to open his defence on count 7.

COUNT 8

A2 is charged with collaboration to commit a crime, to wit- using public office for profit contrary to section 179C (b) of the Criminal Offences Act, 1960 (Act 29) under count 8. Here, A2 is alleged to have collaborated with A1 who held a public office as the Director of the Bureau of National Communications, to dishonestly abuse his office for private benefit in the sum of GH¢49,100,000.

Section 179C (b) of Act 29 provides as follows;

A person commits a criminal offence who not being a holder of public office acts or is found to have acted in collaboration with a person holding a public office for the latter to corruptly or dishonestly abuse the public office for private profit or benefit.

The elements of the offence as charged are;

1. that A2 is not a holder of a public office
2. that A2 acted in collaboration with A1
3. that A1 was holding a public office at the time of the collaboration
4. that the purpose of the collaboration was to enable A1 corruptly or dishonestly abuse his public office
5. that A1's abuse of his public office was for a private benefit, either for himself or his associates

The prosecution must therefore introduce sufficient evidence at the close of its case in support of each of the above elements of the offence charged in order to establish a prima facie case against A2 on this count.

In respect of this count, I hereby repeat what I stated above and rely on what is contained therein touching on the role of A2 in this matter.

I have already held under count 7 that at the close of the prosecution case, there is sufficient evidence to establish at a prima facie level that A1 held a public office at the time of the alleged commission of the crime, that A1 dishonestly abused his public office and that A1's abuse of his public office was for private benefit. I therefore adopt and apply the reasoning and conclusions therein to count 8 and by so doing, I hold that, under count 8, the prosecution has led sufficient evidence to establish at a prima facie level that A1 was holding a public office at the time

he allegedly committed the offence, that he dishonestly abused his public office and that the abuse of his public office was for private benefit.

The question then to address here is whether there is sufficient evidence in support of A2 not being a public office holder, that A2 collaborated with A1 and that the purpose of the collaboration was to enable A1 corruptly or dishonestly abuse his public office?

From the evidence, A2 is a private person who is a director of B.N.C Communication Bureau Limited/B.N.C Communication Limited- Operations and A3 and its sister companies. I have earlier in this ruling, under counts 1, 2 and 3 referred to the evidence showing that cheques in the sums of GH¢27,100,000, GH¢1,000,000 and GH¢21,000,000 were drawn on the Director BNC account at Fidelity Bank between 5th February, 2020 and 1st April, 2020 and the sums therein moved to account number 0241424233018 belonging to B.N.C Communication Limited- Operations. I have also observed under count 7 that there is sufficient evidence establishing at a prima facie level that A1 held a public office at the time of the alleged commission of the crime, that A1 dishonestly abused his public office and that A1's abuse of his public office was for private benefit. The question then is, is there evidence to suggest A2 assisted or aided A1 to enable A1 dishonestly abuse his public office for private benefit? I refer to my ruling above in which I stated that there is evidence of the facilitating role played by A2 which enabled A1 to appropriate the funds in question. The same evidence would support the charge of collaboration so I according consider that evidence as sufficient in support of the charge and call on A1 to open her defence on Count 8.

COUNT 9

Under this count, A1 is charged with obtaining public property by false statements, contrary to section 5 of the Public Property Protection Act, 1977 (SMCD 140). A1 is alleged to have caused GHC 49,100,000 to be given to him by representing that he purchased a cyber defence system, which representation he knew to be false or had no reason to believe to be true.

By section 5 of the Public Property Protection Act, 1977 (SMCD 140), any person who causes any public property, funds, or money to be given or paid to themselves or someone else by means of any statement or representation that they know to be false or have no reason to believe is true commits a criminal offence.

The elements of the offence therefore are;

1. that A1 made a representation that he purchased a cyber defence system from ISC Holdings ltd
2. that A1 knew the representation to be false or had no reason to believe it to be true
3. that A1 through the said representation, caused the total sum of about GH¢49,100,000 to be given to him
4. that the sum of about GH¢49,100,000 is public money

The prosecution at the close of its case must lead evidence in support of each of the above elements of the offence charged, in order to successfully establish a prima facie case against A1 on this count. In my ruling on Count 5 above, I have already stated that at the close of the prosecution case, there is no evidence that suggests that A1 sought and obtained authorisation from any person in order to move the monies from the official accounts to the private accounts controlled by himself and his wife A2. Since he was in charge and dealt with himself, the

element in the charge that requires false representation does not arise in this case. In the circumstances, just as I stated under Count 5 this charge has not been made out from the evidence and so A1 is acquitted and discharged on Count 9.

COUNT 10

The accused persons herein, being A1, A2 and A3 have been charged with Money Laundering contrary to section 1 (2)c of the Anti – Money – Laundering Act, 2020 (Act 1044) under count 10. The accused persons are alleged to have taken possession of a part of the sum of GH¢49,100,000, knowing at the time of taking possession that the money was acquired through stealing.

Section 1(2)c of Act 1044 provides as follows;

"A person commits an offence of money laundering if the person knows or ought to have known that a property is, or forms part of, the proceeds of unlawful activity and the person acquires, uses or takes possession of the property knowing or suspecting at the time of receipt of the property that the property is, or forms part of the proceeds of unlawful activity."

From the above, the elements of the offence as charged are;

1. that the accused persons took possession of part of the sum of GH¢ 49,100,000
2. that part of the sum of GH¢49,100,000 taken possession of by the accused persons forms part of the proceeds of an unlawful activity, to wit; stealing
3. that the accused persons knew or ought to have known that the money was derived from an illicit activity- stealing.

At the close of the prosecution case therefore, it must lead sufficient evidence in support of each of the above elements in respect of each accused person.

Before I proceed to analyze the evidence, with the above elements of the offence charged in mind, it is important to deal with the criminal liability of A3, being a limited liability company it is not a natural person, yet by the nature of the offence charged, the prosecution must establish mens rea on the part of each accused person (that is element number 3 above).

On the issue of the mens rea of an artificial person, Lord Denning in the case of *HL Bolton (engineering) Co, Ltd v. TJ Graham & Sons Ltd [1957] 1 QB 159 at 172 CA*, posited as follows;

> *"A company in many ways be likened to a human body. It has a brain and nerve centre which controls what it does. It also has hands which hold the tools and act in accordance with the direction from the centre. Some of the people in the company are mere servants and agents who are nothing more than the hands to do work and cannot be said to represent the mind or the will. Others are directors and managers who represent the mind and directing will of the company and control what it does. The state of mind of these managers is the state of mind of the company and is treated by the law as such."*

The Republic v. The Managing Director, State Housing Co. Ltd, Exparte Amponsah (unreported)- Civil Appeal No. H1/36/2018, dated 19th April, 2018 is a case where the Court of Appeal affirmed that a company itself being a legal entity can be found liable and sentenced to a fine but it cannot be committed to prison and that a prosecutor is legally permitted to proceed directly against the individual director or executive officer as the directing mind of the company because the company itself can not be committed to prison but its officer(s) can.

In this case therefore, A3 itself as a limited liability company can be held liable, if it took possession of part of the money allegedly stolen if any of its directors knew or ought to have known that the money or part of the money it took possession of was derived from money allegedly stolen and of course, the directors of A3 will be held personally criminally liable for such possession by the company (A3).

The question then is, at the close of the prosecution's case, has it led sufficient evidence to establish at a prima facie level the above elements of the offence charged in respect of each accused person?

It would appear a money laundering charge under section 1(2) of the Money Laundering Act is dependent on the prosecution establishing a predicate offence, if it is to succeed in that money laundering charge- see the case of *The Republic v. Kwame Amponsah & Obareke (unreported) Suit No. J3/1/2025 dated 8/08/26.*

In this case, the predicate offence is stealing.

Under Counts 1, 2 and 3, which are counts of stealing, I have already held that the prosecution has established a prima facie case on those counts at the close of its case. It therefore follows that the prosecution at the close of its case, has successfully established a prima facie case on the predicate offence- stealing.

There is evidence which I have referred to and explained above to show that A1, A2 and A3 took possession of the sum GH¢49,100,000 or part of it- See Exhibits T, T3, T4, V, W, 5 series (5e), U, 7, 15, Y and Y1.

I have also held under count 4 that the prosecution has successfully established a prima facie case against A1 and A2 on caunt 4, being the charge of conspiracy to steal. The combined effect of these is that the prosecution has led sufficient evidence to show at a prima facie level that A1, A2 and A3 involved themselves in Money Laundering so I hereby call on them to open their defences on count 10.

COUNT 11

Under count 11, the accused persons are charged with the offence of Conspiracy to commit Money Laundering contrary to section 3 of the Anti- Money Laundering Act, 2020 (Act 1044). The accused persons are alleged to have agreed to act together to commit money laundering in the sum of GH¢49,100,000 belonging to the Republic.

Section 3 of Act 1044 provides as follows;

"The provision of section 23 of the Criminal Offences Act, 1960 (Act 29) on conspiracy, apply to money laundering with the necessary modification."

The elements of this offence therefore are;

1. Agreement to commit the unlawful act of money laundering –acting for a common design. There need not be any prior deliberation, and

2. Intention on their part to commit that unlawful act as manifested in their common pursuit of the money laundering agenda.

The prosecution at the close of its case must therefore lead sufficient evidence in support of the above elements of the offence charged.

Since section 23 of Act 29 on conspiracy applies to conspiracy to commit money laundering as charged with the necessary modification, the law on conspiracy applies mutatis mutandis to a charge of conspiracy to commit money laundering. I therefore adopt and apply the law as espoused on count 4 to this count (count 11), as if same has been hereunder reproduced.

As indicated earlier in this ruling, conspiracy is inferred or deduced from the acts of accused persons in pursuit of a common criminal agenda. The evidence I have already referred to about the cooperative conduct of A1 and A2 who is the controlling mind of A3 is evidence, sufficient to support the charge of Conspiracy to Launder the Money as I have explained above. The Accused persons are as a result called upon to open their defences on Count 11.

In sum, A1 is to open his defence in respect of counts 1, 2, 3, 4, 6, 7, 10 and 11

A1 is acquitted and discharged on Counts 5 and 9.

A2 is to open her defence on Counts 4, 8, 10 and 11.

A3 is to open its defence on Counts 10 and 11.

(SGD)
H/L FRANCIS APANGABUNO ACHIBONGA, JA.
(JUSTICE OF THE COURT OF APPEAL)

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HIGH COURT
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