IN THE SUPERIOR COURT OF JUDICATURE
IN THE COURT OF APPEAL
ACCRA, A.D. 2026

SUIT NO: **H2/17/2026**

DATED: 30^{TH} JULY, 2026

Coram: EMMANUEL ANKAMAH J.A. (PRESIDING)
SAMUEL OBENG-DIAWUO J.A.
EMMANUEL SENYO AMEDAHE J.A.

SEDINA CHRISTINE TAMAKLOE ATTIONU … 1^{ST} ACCUSED/APPELLANT

VRS

THE REPUBLIC … RESPONDENT

JUDGMENT

E. ANKAMAH J.A

PREFACE

My Lords, the foundation of this opinion is inspired by the eloquent statement of our criminal jurisprudence by the eminent jurist Akamba JSC (as he then was) in the seminal decision in **Ekow Russell v. The Republic [2017]1SCGLR 473:**

'*The strength of our criminal justice system over the years has not thrived on mere wishes and speculation but by the production of evidence that meets the standard of proof of crime in a court of justice*.'

I. INTRODUCTION:

1. My Lords, the 1st Accused/Appellant ('the Appellant') is praying this Court to set aside her conviction and sentencing rendered by the High Court (Financial Crimes Division) on 16th April 2024. The Appellant and one other accused by the name Daniel Axim ('the 2nd Accused') were charged with seventy-eight counts of the following offenses: Conspiracy to Steal, Stealing, Conspiracy to Willfully Cause Financial Loss to the State, Willfully Causing Financial Loss to the State, Causing Loss to Public Property, Improper Payment of Public Funds, Money Laundering, Unauthorised Commitment Resulting in Financial Obligation for the Government and Contravention of the Public Procurement Act.

II. BACKGROUND

a. FACTS PRESENTED BY THE PROSECUTION:

2. The antecedents that culminated in the criminal charges against the Appellant before the High Court are next detailed. The Microfinance and Small Loans Centre (MASLOC) is an agency of the Government of Ghana that primarily offers microcredit and small loans to startups and small businesses, providing them with accessible financing to augment their operations across Ghana. The Appellant was the Chief Executive Officer of MASLOC from November 2013 to January 2017. The 2nd Accused was the Operations Manager at MASLOC during that period. The Economic and Organised Crime Office (EOCO) in 2017, conducted investigations into certain fraudulent disbursement of MASLOC funds involving the Appellant and the 2nd Accused person.

3. EOCO's investigations disclosed that in June 2014, as part of MASLOC's operations, it invested a sum of GHS150,000.00 in Obaatanpa Micro-Finance Company Limited (Obaatanpa), a licensed Tier II microfinance company in Ejura, Ashanti Region. Subsequently, the Appellant offered another investment of GHS500,000.00 in Obaatanpa and a MASLOC ADB Bank cheque dated 24th July 2014 for that investment amount was drawn in favour of Obaatanpa. When Obaatanpa received the ADB cheque, its Board Chairman was informed by the Appellant that the investment of GHS500,000.00 would attract a 24% interest. However, Obaatanpa decided against this investment because it considered the interest rate to be excessive and issued a cheque to refund the GHS500,000.00.

4. When Obaatanpa presented the cheque to MASLOC, the Appellant declined to accept and instead demanded a cash payment of the GHS500,000.00. On the night of 28th August 2014, the Board Chairman of Obaatanpa delivered a cash amount of GHS500,000.00 to the Appellant at the Baatsona Total Filing Stationon the Spintex Road, Accra. The Appellant in a letter dated 28th August 2014, acknowledged receipt of the refund from Obaatanpa. In 2015, MASLOC sent demand letters to Obaatanpa for the payment of interest on the GHS500,000.00 investment. Obaatanpa responded, by asserting that MASLOC's demands were unjustified and reminded the Appellant of the cash refund. There were no further demands from MASLOC after the response from Obaatanpa.

5. In 2017, MASLOC had a new Chief Executive Officer who sent another demand notice to Obaatanpa for the payment of accrued interest on the GHS500,000.00. Again, Obaatanpa informed MASLOC that the investment had already been returned to MASLOC. EOCO's investigation revealed that MASLOC did not have any record of receiving the refund of GHS500,000.00 from Obaatanpa. It concluded that the Appellant had appropriated the sum of GHS500,000.00 which was delivered to her by Obaatanpa.

6. Further investigations by EOCO showed that in April 2016, the Appellant received approval from the Board of MASLOC to utilize the sum of GHS1,706,000.00 of its funds for a nationwide sensitization and monitoring programme for 85,300 beneficiaries of MASLOC loans. The targeted beneficiaries were to receive GHS20 to cover transportation and refreshment.

The Appellant and the 2nd Accused from April 2016 to December 2016 withdrew GHS1,816,000.00 in tranches despite receiving Board approval for

GHS1,706,000.00. Despite withdrawing GHS1,816,000.00, only GHS1,300.00 was spent on beneficiaries in the Volta, Greater Accra, and Brong Ahafo Regions. No sensitization or monitoring programmes were conducted in the other regions.

7. Moreover, even before the Board's approval of GHS1,706,000.00 in April 2016 for a nationwide sensitization and monitoring programme, the Appellant had appropriated GHS246,280.00 intended for training, sensitization and financial literacy.

8. According to the EOCO investigations, in 2013, MASLOC was authorised by then President John Mahama to provide financial assistance to victims of the

Kantamanto market fire disaster. This assistance was to be done through Dwadifo Adamfo Savings and Loans Company Limited (Dwadifo Adamfo) by disbursing GHS1,465,035.00 to the victims. However, investigations showed that the Appellant appropriated GHS579,800.00 out of the GHS1,465,035.00.

9. In August 2016, the Appellant, acting for and on behalf of MASLOC, addressed correspondence to the Public Procurement Authority (PPA) requesting approval, pursuant to the Public Procurement Act, for the procurement of vehicles from Mac Autos and Spare Parts Ltd for the benefit of the GPRTU by means of the single-source procurement method. The PPA in response, requested MASLOC to provide it with financial arrangement as approved by the Finance Ministry. On 5th December 2016, the Minster for Finance wrote to the PPA to confirm financial arrangements under consideration for the procurement of the vehicles. The Appellant, without obtaining any approval from the PPA, executed a contract with MAC Autos on the 6th of December 2016 for the supply of 350 vehicles.

10. The vehicles in question comprised 150 Chevy Aveo saloon cars, 100 Chevy Sparklite vehicles, and 100 thirty-three-seater Isuzu buses. MASLOC thereafter applied for, and obtained, tax waivers in respect of all the vehicles to be supplied by Mac Autos. The unit price quoted by Mac Autos for each Chevy Aveo was GHS74,495.00 (US$18,883.39). The investigators, however, found that, withinthe same year and exclusive of duty, Mac Autos offered the same vehicle at a retail price of GHS47,346.93 (US$12,009.91). Similarly, the unit price quoted for each Chevy Sparklite was GHS65,095.00 (US$16,500.63), whereas the corresponding retail price offered by Mac Autos during the same period, exclusive of duty, was GHS35,918.37 (US$9,104.77). As regards the thirty-three- seater Isuzu buses, Mac Autos quoted MASLOC a unit price of GHS445,560.00 (US$112,942.96), notwithstanding that the actual retail price, exclusive of duty, was GHS293,877.55 (US$74,493.67).

11. In November 2016, MASLOC procured 200 Samsung B310 dual-SIM mobile telephones under the PINCO Project Market Survey. Although the Appellant asserted that the said telephones had been purchased at a total cost of GHS93,412.00, the investigations revealed that their true open-market value was GHS24,400.00. Thereafter, in January 2017, the Appellant caused to be paid to herself and to her deputy, Mustapha Abubakar Batalima, the sums of GHS135,592.33 and GHS82,218.76 respectively, purportedly by way of ex gratia. In that same month, she further caused cash payments of GHS28,445.94 and GHS27,486.62 to be made respectively to herself and to her said deputy, allegedly in lieu of leave, contrary to law.

B. THE CHARGES:

12. The events outlined above resulted in the filing of 78 distinct criminal charges against the Appellant and the 2nd Accused person on 30th January 2019. My Lords, I deem it prudent to reproduce all the charges in full as presented by the Republic and having regard to the points of law raised by the Appellants in this appeal that the charges were incurably defective:

COUNT ONE

STATEMENT OF OFFENCE:

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29)

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu, on or about 28th August 2014 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢500,000.00 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT TWO

STATEMENT OF OFFENCE:

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29)

PARTICULARS OF OFFENCE:

Sedina-Christine Tamakloe Attionu on or about 13th April 2016 in the Greater Accra Region dishonestly appropriated the sum GH¢84,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT THREE

STATEMENT OF OFFENCE:

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29)

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu, on or about 21st April, 2016 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢73,500 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT FOUR

STATEMENT OF OFFENCE:

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29)

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu, on or about 1st June, 2016 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢126,000 the property of Microfinance and Small Loans Centre (MASLOC)

COUNT FIVE

STATEMENT OF OFFENCE:

Conspiracy to commit crime namely stealing contrary to Sections 23(1) and 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1. Sedina Christine Tamakloe Attionu, 2) Daniel Axim on or about 16th June, 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose to steal the sum of GH¢114,000 the property of Microfinance and Small

Loans Centre (MASLOC).

COUNT SIX

STATEMENT OF OFFENCE:

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29)

PARTICULARS OF OFFENCE:

1. Sedina Christine Tamakloe Attionu, 2) Daniel Axim on or about 16th June, 2016 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢114,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT SEVEN

STATEMENT OF OFFENCE:

Conspiracy to commit crime namely stealing (contrary to Sections 23(1) and 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1. Sedina Christine Tamakloe Attionu, 2) Daniel Axim between 14th and 15th July, 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose to steal the sum of GH¢228,000 the property of Micro finance and Small Loans Centre (MASLOC).

COUNT EIGHT

STATEMENT OF OFFENCE:

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29)

PARTICULARS OF OFFENCE:

1. Sedina Christine Tamakloe Attionu, 2) Daniel Axim between 14th and 15th July, 2016 in Accra in the Greater Accra Region Dishonestly appropriated the sum of GH¢228,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT NINE

STATEMENT OF OFFENCE:

Conspiracy to commit crime namely stealing contrary to Sections 23(1) and 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1. Sedina Christine Tamakloe Attionu, 2) Daniel Axim on or about 20th July, 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose to steal the sum of GH¢204,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT TEN

STATEMENT OF OFFENCE:

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1. Sedina Christine Tamakloe Attionu, 2) Daniel Axim on or about 20th July, 2016 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢204,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT ELEVEN

STATEMENT OF OFFENCE:

Conspiracy to commit crime namely stealing contrary to Sections 23(1) and 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1. Sedina Christine Tamakloe Attionu, 2) Daniel Axim on or about 29th July, 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose to steal the sum of GH¢192,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT TWELVE

STATEMENT OF OFFENCE:

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29

PARTICULARS OF OFFENCE:

1. Sedina Christine Tamakloe Attionu, 2) Daniel Axim on or about 29th July, 2016 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢192,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT THIRTEEN

STATEMENT OF OFFENCE:

Conspiracy to commit crime namely stealing contrary to Sections 23(1) and 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1. Sedina Christine Tamakloe Attionu, 2) Daniel Axim on or about 25th August, 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose to dishonestly appropriate the sum of GH¢158,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT FOURTEEN

STATEMENT OF OFFENCE:

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29)

PARTICULARS OF OFFENCE:

1. Sedina Christine Tamakloe Attionu, 2) Daniel Axim on or about 25th August, 2016 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢158,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT FIFTEEN

STATEMENT OF OFFENCE:

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960(Act 29).

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu on or about 31st August, 2016 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢50,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT SIXTEEN

STATEMENT OF OFFENCE:

Conspiracy to commit crime namely stealing contrary to Sections 23(1) and 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1. Sedina Christine Tamakloe Attionu, 2) Daniel Axim on or about 28th September, 2016 in Accra in the Greater Acer Region agreed to act together with a common purpose to dishonestly appropriate the sum of GH¢162,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT SEVENTEEN

STATEMENT OF OFFENCE:

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1. Sedina Christine Tamakloe Attionu, 2) Daniel Axim on or about 28th September, 2016 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢162,000 the property of Micro finance and Small Loans Centre (MASLOC).

COUNT EIGHTEEN

STATEMENT OF OFFENCE:

Conspiracy to commit crime namely stealing contrary to Sections 23(1) and 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1. Sedina Christine Tamakloe Attionu, 2) Daniel Axim on or about 9th November, 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose to dishonestly appropriate the sum of GH¢138,000 the property of Microfinance and Small Loans Centre (MASLOC) .

COUNT NINETEEN

STATEMENT OF OFFENCE:

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1. Sedina Christine Tamakloe Attionu, 2) Daniel Axim on or about 9th November, 2016 in Accra in the Greater Accra Region dishonestly appropriated the sum ofGH¢138,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT TWENTY

STATEMENT OF OFFENCE:

Conspiracy to commit crime namely stealing contrary to Sections 23(1) and 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1. Sedina Christine Tamakloe Attionu, 2) Daniel Axim on or about 1st December, 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose to dishonestly appropriate the sum of GH¢50,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT TWENTY-ONE

STATEMENT OF OFFENCE:

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1. Sedina Christine Tamakloe Attionu, 2) Daniel Axim on or about 1st December, 2016 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢50,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT TWENTY-TWO

STATEMENT OF OFFENCE:

Conspiracy to commit crime namely stealing contrary to Sections 23(1) and 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1. Sedina Christine Tamakloe Attionu, 2) Daniel Axim on or about 5th December, 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose to dishonestly appropriate the sum of GH¢178,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT TWENTY-THREE

STATEMENT OF OFFENCE:

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1.Sedina Christine Tamakloe Attionu, 2) Daniel Axim on or about 5th December, 2016 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢178,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT TWENTY-FOUR

STATEMENT OF OFFENCE:

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu, on or about 31st March, 2015 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢20,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT TWENTY - FIVE

STATEMENT OF OFFENCE:

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu, on or about 1st April, 2015 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢2,730 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT TWENTY- SIX

STATEMENT OF OFFENCE:

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu, on or about 19th August, 2015 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢40,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT TWENTY -SEVEN

STATEMENT OF OFFENCE:

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu, or about 14th July, 2015 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢40,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT TWENTY - EIGHT

STATEMENT OF OFFENCE:

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu, on or about 14th July, 2015 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢40,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT TWENTY – NINE

STATEMENT OF OFFENCE:

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu, on or about 15th July, 2015 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢20,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT THIRTY

STATEMENT OF OFFENCE:

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu, on or about 12th August, 2015 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢20,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT THIRTY – ONE

STATEMENT OF OFFENCE:

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu, on or about 24th February, 2016 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢21,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT THIRTY - TWO

STATEMENT OF OFFENCE:

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu, on or about 2nd March, 2016 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢43,550 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT THIRTY - THREE

STATEMENT OF OFFENCE:

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu, on or about 11th August, 2015 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢40,000 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT THIRTY - FOUR

STATEMENT OF OFFENCE:

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu, on or about 13th June, 2015 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢305,300 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT THIRTY – FIVE

STATEMENT OF OFFENCE:

Stealing contrary to section 124(1) of the Criminal Offence Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu, on or about 21st June, 2015 in Accra in the Greater Accra Region dishonestly appropriated the sum of GH¢274,500 the property of Microfinance and Small Loans Centre (MASLOC).

COUNT THIRTY – SIX

STATEMENT OF OFFENCE:

Willfully Causing Financial Loss, to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu on or about 1st April, 2015 in Accra in the Greater Accra Region Willfully caused financial loss of GH¢2,730 to the State.

COUNT THIRTY – SEVEN

STATEMENT OF OFFENCE:

Willfully Causing Financial Loss, to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu on or about 19th May, 2015 in Accra in the Greater Accra Region Willfully caused financial loss of GH¢40,000 to the State.

COUNT THIRTY – EIGHT

STATEMENT OF OFFENCE:

Willfully Causing Financial Loss, to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu on or about 14th July, 2015 in Accra in the Greater Accra Region Willfully caused financial loss of GH¢40,000 to the State

COUNT THIRTY – NINE

STATEMENT OF OFFENCE:

Willfully Causing Financial Loss, to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu on or about 15th July, 2015 in Accra in the Greater Accra Region Willfully caused financial loss of GH¢20,000 to the State

COUNT FORTY

STATEMENT OF OFFENCE:

Willfully Causing Financial Loss, to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu on or about 12th August, 2015 in Accra in the Greater Accra Region Willfully caused financial loss of GH¢20,000 to the State

COUNT FORTY - ONE

STATEMENT OF OFFENCE:

Willfully Causing Financial Loss, to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu on or about 12th August, 2015 in Accra in the Greater Accra Region Willfully caused financial loss of GH¢20,000 to the State.

COUNT FORTY - TWO

STATEMENT OF OFFENCE:

Willfully Causing Financial Loss, to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu on or about 2nd March, 2015 in Accra in the Greater Accra Region Willfully caused financial loss of GH¢43,550 to the State.

COUNT FORTY - THREE

STATEMENT OF OFFENCE:

Willfully Causing Financial Loss, to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 13th April,

2016 in Accra in the Greater Accra Region agreed to act together with a common purpose to Willfully cause financial lost to the State.

COUNT FORTY -FOUR

STATEMENT OF OFFENCE:

Willfully Causing Financial Loss, to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 13th April, 2016 in Accra in the Greater Accra Region Willfully caused financial loss of GH¢84,000 to the State.

COUNT FORTY - FIVE

STATEMENT OF OFFENCE:

Conspiracy to commit crime namely, Willfully causing financia1 1oss to the State contrary to Sections 23(1) and 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 21st April, 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose to Willfully cause financial loss to the State.

COUNT FORTY - SIX

STATEMENT OF OFFENCE:

Willfully Causing Financial Loss, to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1) Sedina Christine Tamakloe Attionu ,2) Daniel Axim on or about 21st April, 2016 in Accra in the Greater Accra Region Willfully caused financial loss of GH¢73,500 to the State.

COUNT FORTY - SEVEN

STATEMENT OF OFFENCE:

Willfully Causing Financial Loss, to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu on or about 21st April, 2016 in Accra in the Greater Accra Region Willfully accused financial loss of GH¢186,000 to the State.

COUNT FORTY - EIGHT

STATEMENT OF OFFENCE:

Conspiracy to commit crime namely, Willfully causing financia1 loss to the State contrary to Sections 23(1) and 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 16th June, 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose to Willfully caused financial loss to the State.

COUNT FIFTY –ONE

STATEMENT OF OFFENCE:

Willfully Causing Financial Loss, to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 16th June, 2016 in Accra in the Greater Accra Region Willfully caused financial loss of GH¢114,000 to the State.

COUNT FIFTY –TWO

STATEMENT OF OFFENCE:

Conspiracy to commit crime namely, Willfully causing financia1 loss to the State contrary to Sections 23(1) and 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim between 14th and 15th July 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose to Willfully caused financial loss to the State.

COUNT FIFTY –THREE

STATEMENT OF OFFENCE:

Willfully Causing Financial Loss, to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim between 14th and 15th July, 2016 in Accra in the Greater Accra Region Willfully caused financial loss of GH¢228,000 to the State.

COUNT FIFTY –FOUR

STATEMENT OF OFFENCE:

Willfully Causing Financial Loss, to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 20th July, 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose to Willfully cause financial loss to the State.

COUNT FIFTY –FIVE

STATEMENT OF OFFENCE:

Willfully Causing Financial Loss, to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 20th July, 2016 in Accra in the Greater Accra Region Willfully caused financial loss of GH¢204,000 to the State.

COUNT FIFTY –SIX

STATEMENT OF OFFENCE:

Conspiracy to commit crime namely, Willfully causing financia1 loss to the State contrary to Sections 23(1) and 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 29th July, 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose of Willfully causing financial loss to the state.

COUNT FIFTY –SEVEN

STATEMENT OF OFFENCE:

Willfully Causing Financial Loss, to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE: 1) Sedina Christine Tamakloe Attionu 2)

Daniel Axim on or about 29th July, 2016 in Accra in the Greater Accra Region

Willfully caused financial loss of GH¢192,000 to the State.

COUNT FIFTY –EIGHT

STATEMENT OF OFFENCE: Conspiracy to commit crime namely, willfully causing financia1 loss to the State contrary to Sections 23(1) and 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 25th August,2016 in Accra ,in the Greater Accra Region agreed to act together with a common purpose of Willfully causing financial loss to the State.

COUNT FIFTY –NINE

STATEMENT OF OFFENCE:

Willfully Causing Financial Loss, to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 25th August, 2016 in Accra in the Greater Accra Region Willfully caused financial loss of GH¢158,000 to the State.

COUNT SIXTY

STATEMENT OF OFFENCE:

Conspiracy to commit crime namely, Willfully causing financia1 loss to the Statecontrary to Sections 23(1) and 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 28th

September, 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose of Willfully causing financial loss to the State.

COUNT SIXTY - ONE

STATEMENT OF OFFENCE:

Willfully Causing Financial Loss, to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 28th September, 2016 in Accra in the Greater Accra Region Willfully caused financial loss of GH¢162,000 to the State.

COUNT SIXTY - TWO

STATEMENT OF OFFENCE: Conspiracy to commit crime namely, willfully causing financia1 loss to the State contrary to Sections 23(1) and 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 9th November, 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose of Willfully causing financial loss to the State.

COUNT SIXTY - THREE

STATEMENT OF OFFENCE:

Willfully Causing Financial Loss, to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 9th November, 2016 in Accra in the Greater Accra Region Willfully caused financial loss of GH¢138,000 to the State.

COUNT SIXTY - FOUR

STATEMENT OF OFFENCE:

Willfully Causing Financial Loss, to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1) Sedina Christine Tamakloe Attionu on or about 11th November, 2016 in Accra in the Greater Accra Region Willfully caused financial loss of GH¢69,012 to the State.

COUNT SIXTY - FIVE

STATEMENT OF OFFENCE:

Conspiracy to commit crime namely, Willfully causing financia1 loss to the State contrary to Sections 23(1) and 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 1st December, 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose of Willfully causing financial loss to the State.

COUNT SIXTY - SIX

STATEMENT OF OFFENCE: Willfully Causing Financial Loss, to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1) Sedina Christine Tamakloe Attionu on or about 1st December, 2016 in Accra in the Greater Accra Region Willfully caused financial loss of GH¢50,000 to the State.

COUNT SIXTY - SEVEN

STATEMENT OF OFFENCE:

Conspiracy to commit crime namely, Willfully causing financia1 loss to the State contrary to Sections 23(1) and 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 5th December, 2016 in Accra in the ·Greater Accra Region agreed to act together with a common purpose of Willfully causing financial loss to the State.

COUNT SIXTY - EIGHT

STATEMENT OF OFFENCE:

Willfully Causing Financial Loss, to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1) Sedina Christine Tamakloe Attionu on or about 5th December, 2016 in Accra in the Greater Accra Region Willfully caused financial loss of GH¢178,000 to the State.

COUNT SIXTY - NINE

STATEMENT OF OFFENCE:

Causing Loss to Public Property, contrary to section 2 of the Public Property Protection Act, 1977 (SMCD 140).

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu between December, 2016 and August, 2018 in Accra in the Greater Accra Region with gross negligence, caused loss of GH¢4,072,210.50 to the State

COUNT SEVENTY

STATEMENT OF OFFENCE:

Causing Loss to Public Property, contrary to section 2 of the Public Property

Protection Act, 1977 (SMCD 140).

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu between December, 2016 and August, 2018 in Accra in the Greater Accra Region with gross negligence, caused loss of GH¢2,917,663 to the state.

COUNT SEVENTY- ONE

STATEMENT OF OFFENCE:

Causing Loss to Public Property, contrary to section 2 of the Public Property Protection Act, 1977 (SMCD 140).

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu between December, 2016 and August, 2018 in Accra in the Greater Accra Region with gross negligence, caused loss of GH¢15,168,245 to State

COUNT SEVENTY- TWO

STATEMENT OF OFFENCE:

Improper payment of public funds contrary to section 96(l)(c) of the Public Financial Management Act, 2016 (Act 921).

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu on or about 6th January 2017 in Accra in the Greater Accra Region improperly paid to yourself the sum of GH¢164,038.28 which was not verified in line with existing procedures.

COUNT SEVENTY- THREE

STATEMENT OF OFFENCE:

Improper payment of public funds contrary to section 96(l)(c) of the Public

Financial Management Act, 2016 (Act 921).

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu on or about 6th January 2017 in Accra in the Greater Accra Region improperly paid to yourself the sum of GH¢109,705.38 to Mustapha Abubakar Batalima which was not verified in line with existing procedures.

COUNT SEVENTY- FOUR

STATEMENT OF OFFENCE:

Unauthorized Commitment, resulting in a Financial Obligation for the Government contrary to section 96(1)(a) of, the Public Financial Management Act, 2016 (Act 921).

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu between December 2016 and August 2018 in Accra in the Greater Accra Region without authorization, committed the Government of Ghana to a financial obligation of GH¢61,735,832.50.

COUNT SEVENTY- FIVE

STATEMENT OF OFFENCE:

Money Laundering contrary to section l(l)(c) of the Anti-Money Laundering Act, 2008 (Act 749).

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu on or about 28th August, 2014 in Accra in the Greater Accra Region took possession of the sum of GH¢500,000.00 the property of MASLOC knowing it to be proceeds of crime.

COUNT SEVENTY- SIX

STATEMENT OF OFFENCE:

Money Laundering contrary to section l(l)(c) of the Anti-Money Laundering Act, 2008 (Act 749).

PARTICULARS OF OFFENCE:

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim between June and December 2016 in Accra in the Greater Accra Region took possession of the sum of GH¢2,003,800 the property of MASLOC knowing it to be proceeds of crime.

COUNT SEVENTY- SEVEN

STATEMENT OF OFFENCE:

Money Laundering contrary to section l(l)(c) of the Anti-Money Laundering Act, 2008 (Act 749).

PARTICULARS OF OFFENCE:

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim between 13th and 21st June 2015 in Accra in the Greater Accra Region took possession of the sum of GH¢579,800 the property of MASLOC knowing it to be proceeds of crime.

COUNT SEVENTY- EIGHT [sic]

STATEMENT OF OFFENCE:

Money Laundering contrary to section l(l)(c) of the Anti-Money Laundering Act, 2008 (Act 749).

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu between March 2015 and June 2016 in Accra in the Greater Acer Region took possession of the sum of GH¢620,780 the property of MASLOC knowing it to be proceeds of crime.

COUNT SEVENTY- NINE [sic]

STATEMENT OF OFFENCE:

Contravention of the Public Procurement Act contrary to sections 92(1) and 40(l)(a) of the Public Procurement Act, 2003 (Act 663).

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu in December 2016 in Accra in the Greater Accra Region procured the supply of 350 vehicles from Mac Autos & Spare Parts Ghana Ltd. using public funds without satisfying the prescribed conditions for single-source procurement.

COUNT EIGHTY [sic]

STATEMENT OF OFFENCE:

Contravention of the Public Procurement Act contrary to sections 92(1) and 40(l)(a) of the Public Procurement Act, 2003 (Act 663).

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu in December 2016 in Accra in the Greater Accra Region procured the supply of 350 vehicles from Mac Autos & Spare Parts Ghana Ltd. using public funds without recourse to laid-down procurement provisions.

13. My Lords, the charges set out above reproduce, in substance, the form in which they appeared on the charge sheet, albeit with evident errors in the numbering of the counts from Count Forty-Eight through to Count Eighty. Upon even a cursory examination, it is apparent that Counts Forty-Nine and Fifty were omitted. That irregularity, however, is not, in my judgment, of any fatal consequence, the true and operative number of counts being seventy-eight, and not eighty as erroneously stated on the charge sheet filed by the Republic. The trial judge correctly identified the misnumbering of counts in the final judgment.

C. THE TRIAL, CONVICTION AND SENTENCING

14. The Appellant was present for the greater part of the trial but ceased to attend when the proceedings had reached their latter stages. On 30th July 2021, she applied to the High Court for the release of her passport to enable her travel outside the jurisdiction for medical review. The court acceded to that application, upon the express condition that she would return and appear before it on 10th October 2021 for the continuation of the trial. She did not do so. Notwithstanding repeated adjournments afforded by the High Court to secure her attendance, the Appellant persisted in her non-appearance.

15. On 18th January 2022, the High Court held that she had absconded in breach of the terms of her bail and directed her sureties to produce her on or before 22nd December 2022, failing which their recognisances would be forfeited to the Republic. On 24th January 2023, the court accordingly ordered the forfeiture of the sureties' bonds. In the end, the learned trial judge was satisfied that the Appellant, though duly notified of and fully aware of the subsisting proceedings, had by her own conduct disabled herself from participating further in the trial. The High Court was therefore entitled, in accordance with Article 19 (3) of the Constitution, 1992 to proceed with the trial in her absence.

16. The trial proceeded to its conclusion in the absence of the Appellant, though the 2nd Accused participated throughout. The Prosecution called seven witnesses: Stephen Amoah (PW1), then CEO of MASLOC; Samuel Quanah (PW2), accountant and Board Member of Obaatanpa Microfinance; Seth Obugeyi Asiedu (PW3), then board chairman of Obaatanpa Microfinance; Samuel Neequaye (PW4), appellant's driver at MASLOC; Francis Bandoh (PW5), Head of Finance at MASLOC; Philip Baffour-Awuah (PW6), Managing Partner of Baffour Awuah and Associates retained to audit MASLOC; and Kodua Basoa Panyin Twum (PW7), Field Desk Officer at EOCO.

17. The learned trial judge found both the Appellant and the 2nd Accused guilty on all counts and imposed sentence in the following terms:

a. In respect of stealing, the Appellant was convicted on Counts 1, 2, 3, 4, 15 and 24 to 35, and was sentenced to ten years' imprisonment with hard labour.

b. In respect of conspiracy to steal, the Appellant and the 2nd Accused were convicted on Counts 5, 7, 9, 11, 13, 16, 18, 20 and 22. The Appellant was sentenced to ten years' imprisonment with hard labour, and the 2nd Accused to five years' imprisonment with hard labour.

c. In respect of conspiracy to steal and stealing, the Appellant and the 2nd Accused were convicted on Counts 6, 8, 10, 12, 14, 17, 19, 21 and 23. The *Sedina Christine Tamakloe vs. The Republic_CA_2026* - 37 -

Appellant was sentenced to ten years' imprisonment with hard labour, and the 2nd Accused to five years' imprisonment with hard labour.

d. In respect of Willfully causing financial loss to the State, the Appellant was convicted on Counts 36, 37, 38, 39, 40, 41, 42, 47 and 64, and was sentenced to three years' imprisonment and to a fine of 3,000 penalty units, or, in default of payment, to a further term of two years' imprisonment with hard labour.

e. In respect of conspiracy to Willfully cause financial loss to the State, the Appellant and the 2nd Accused were convicted on Counts 43, 45, 48, 52, 54, 56, 58, 60, 62, 65 and 67. The Appellant was sentenced to three years' imprisonment and to a fine of 3,000 penalty units, or, in default of payment, to a further term of two years' imprisonment with hard labour. The 2nd Accused was sentenced to twelve months' imprisonment and to a fine of 1,000 penalty units, or, in default of payment, to a further term of twelve months' imprisonment.

f. In respect of Willfully causing financial loss to the State, the Appellant and the 2nd Accused were convicted on Counts 44, 46, 49, 51, 53, 55, 57, 59, 61, 63, 66 and 68. The Appellant was sentenced to three years' imprisonment and to a fine of 3,000 penalty units, or, in default of payment, to a further term of two years' imprisonment with hard labour. The 2nd Accused was sentenced to twelve months' imprisonment and to a fine of 1,000 penalty units, or, in default of payment, to a further term of twelve months' imprisonment.

g. In respect of causing loss to public property, the Appellant was convicted on Counts 69, 70 and 71, and was sentenced to a custodial term of two years and to a fine of 500 penalty units, or, in default of payment, to twelve months' imprisonment.

h. In respect of improper payment of public funds, the Appellant was convicted on Counts 72 and 73 and was sentenced to a custodial term of six months on each count.

i. In respect of unauthorised commitment resulting in financial obligation for the Government, the Appellant was convicted on Count 74 and was sentenced to a custodial term of six months.

j. In respect of money laundering, the Appellant was convicted on Counts 75 and 78 and was sentenced to three years' imprisonment with hard labour and to a fine of 2,000 penalty units, or, in default of payment, to a further term of two years' imprisonment.

k. In further respect of money laundering, the Appellant and the 2nd Accused were convicted on Counts 76 and 77. The Appellant was sentenced to three years' imprisonment with hard labour and to a fine of 2,000 penalty units, or, in default of payment, to a further term of two years' imprisonment; the 2nd Accused was sentenced to two years' imprisonment with hard labour and to a fine of 500 penalty units, or, in default of payment, to twelve months' imprisonment.

l. In respect of contravention of the Public Procurement Act, the Appellant was convicted on Counts 79 and 80 and sentenced to two years' imprisonment and to a fine of 1,000 penalty units, or, in default of payment, to a further term of twelve months' imprisonment.

18. The learned trial judge ordered that the sentences should run concurrently. The court further directed the Republic to institute forfeiture proceedings against the assets of the Appellant, having found that she had received a substantial portion of the funds occasioning loss to the State.

III. THE GROUNDS OF APPEAL:

19. Despite being absent from the jurisdiction, the Appellant appealed her conviction and sentencing to this Court on 9th May 2024. The Appellant set out nine (9) grounds of appeal as follows:

a) *The conviction and sentence of the 1st Accused/Appellant for the offences of conspiracy to steal, stealing, conspiracy to cause financial loss to the state, causing financial loss to the State, causing loss to public property, improper payment of public funds, unauthorized commitment to resulting in financial obligation to Government, money laundering and breach of the Procurement Act is unreasonable and cannot be supported having regard to the evidence on record.*

b) *The court below erred in convicting the 1st Accused/Appellant for conspiracy to steal and stealing.*

c) *The court below erred in convicting the 1st Accused/Appellant for conspiring to cause financial loss as well as causing financial loss to the State.*

d) *The court below erred in convicting the 1st Accused/Appellant for causing loss to public property*

e) *The court below erred in convicting the 1st Accused/Appellant for improper payment of public funds.*

f) *The court below erred in convicting the 1st Accused/Appellant for unauthorized commitment resulting in financial obligation to Government.*

g) *The court below erred in convicting the 1st Accused/Appellant for money laundering*

h) *The court below erred in convicting the 1st Accused/Appellant for contravention of the Public Procurement Act*

i) *The sentence imposed on the 1st Accused/Appellant was harsh and excessive having regard to the facts and circumstances of the case including the considerations taken into account by the court below before imposing the sentence.*

a. SUMMARY OF THE SUBMISSIONS OF THE APPELLANT:

20. Counsel for the Appellant argued grounds '*b'* to '*h'* under the omnibus ground '*a'*. It is the Appellant's case that the charge sheet which initiated the criminal proceedings is defective and cannot justify the Appellant's conviction. The Appellant claims that count 5 to 71 are defective because the particulars of the offenses in the conspiracy to steal, stealing, conspiracy to Willfully cause financial loss to the state, and causing financial loss to the state charges do not show any acts, omissions or transactions involving the Appellant.

21. The Appellant argues that the charges lack specific details about her dishonest appropriation of funds and the acts or omissions that led to financial and public property losses. This is similar to the charges on improper payments of public funds, which were not verified due to the Prosecution's failure to disclose existing procedures that the Appellant allegedly violated. Additionally, the charges on committing the Government of Ghana to a financial obligation without authorization do not specify the transaction, the entity involved, or the required authorization.

22. In advancing the submission, learned counsel for the Appellant placed reliance upon **The Republic v. Ernest Thompson & 4 Ors (Criminal Appeal no. J3/05/2020)** dated 17th ('**the Ernest Thompson Case**'). The submission, as I understand it, is that that decision states the governing standard by which the proper formulation of a criminal charge is to be judged. On that footing, counsel contends that a charge is duly framed only where it gives the accused sufficient notice of the nature of the acts alleged against her, being the acts said to constitute the conduct which the law has proscribed and to which penal consequences attach. Therefore, Counsel submits that the absence of these details violates Article 19(2)(d) of the Constitution and Section 112(1) of the Criminal and Other Offences (Procedure) Act, 1960 and a conviction and sentencing based on these defective charges must be set aside.

23. The Appellant submits, in the alternative, that even if the charges are held not to be defective, the Prosecution failed to discharge the evidential burden of proving every essential element of the offences. That burden, counsel contends, rests squarely upon the Prosecution under sections 11(2) and 13(1) of the Evidence Act, 1975 (NRCD 323), read with the constitutional presumption of innocence guaranteed by Article 19(2)(c) of the Constitution, 1992. It is therefore argued that the learned trial judge impermissibly shifted that burden to the Appellant by requiring her to establish her innocence, notwithstanding the Prosecution's alleged failure to make out even a prima facie case.

24. As regarding the charge of stealing GHS500,000.00, counsel argues that, once the Appellant denied in her EOCO statement that she authored the letter acknowledging receipt of that sum from Obaatanpa, it remained for the Prosecution to prove both authorship and receipt. The complaint is that the learned trial judge instead required the Appellant to prove that she neither wrote the letter nor received the cash. Reliance is placed on the unreported decision of this Court dated 30th July 2024 in **Suit No. H2/22/2023 Republic v. Cassiel Ato Forson & 2 Ors ('the Ato Forson Case')** for the proposition that, save in strict liability offences, an accused bears no duty to assist the Prosecution to establish its case.

25. Counsel extends that submission, and the principle said to arise from the ***Ato Forson Case*** to the counts alleging conspiracy to steal and stealing of GHS2,044,780.00 earmarked for nationwide sensitisation and monitoring programmes. The Appellant's case is that the funds were applied to their intended purposes. The Prosecution, by contrast, asserted that no such programmes took place, yet called neither the relevant MASLOC Regional Directors nor the named beneficiaries as material witnesses. Counsel accordingly submits that the learned trial judge erred in holding that, because the Appellant advanced a positive assertion, she bore the evidential burden of proving it.

26. The same argument is deployed in relation to the alleged stealing of GHS579,800.00 intended for victims of the Kantamanto fire disaster. The Appellant maintains that those funds were duly applied for their intended purpose, whereas the Respondent alleged the contrary. It is therefore submitted that, if this Court concludes that the Appellant neither stole MASLOC funds nor Willfully caused financial loss to the State, the related counts of causing loss to public property must necessarily fail.

27. Finally, counsel submits that the remaining counts were unsupported by cogent and consistent evidence. This criticism is directed, in particular, at the counts of conspiracy to Willfully cause financial loss to the State, unauthorised commitment resulting in financial obligation for the Government, money laundering, and contravention of the Public Procurement Act. In counsel's submission, the evidence adduced by the Respondent fell short of proving, beyond reasonable doubt, the distinct legal elements of those offences.

b. SUMMARY OF THE SUBMISSIONS OF THE RESPONDENT:

28. The Respondent, in her written submissions, raises a preliminary objection that, at the time this appeal was instituted, the Appellant was a fugitive from justice and was therefore disentitled from invoking the appellate jurisdiction of this Court to impeach her conviction and sentence. The merits of that objection will be considered in the analysis of the grounds of appeal.

29. Beyond that objection, the Respondent contends that the Appellant, without leave of this Court, advanced a fresh ground of appeal by arguing that no prima facie case had been made to warrant the order that she open her defence. The Respondent submits that this course is contrary to rule 8(7) of the Court of Appeal Rules, 1997 (CI 19), and to the decision of the Supreme Court in **In re Awere- Kyere (Decd); Awere-Kyere v Foster & Anor [2003-2004] SCGLR 1050**. This Court is accordingly urged not to entertain matters not contained in the notice of appeal. Counsel, however, acknowledges that Rule 8(8) of CI 19 permits this Court, in an appropriate case, not to confine itself strictly to the grounds formulated by an appellant, and therefore addressed the substance of all the Appellant's submissions. On the merits, the Respondent maintains that a prima facie case was established, the evidence led being sufficient to justify the trial judge's direction that the Appellant open her defence.

30. As to the alleged defectiveness of the charge sheet, the Respondent submits that the particulars of the various counts disclosed sufficient detail to enable the Appellant to plead to them, consistent with section 112 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30). The information supplied, it is said, was adequate to apprise the Appellant of the precise unlawful conduct alleged against her. The Respondent further argues that, had the charges been unclear, the Appellant could and should have objected at the plea stage. She did not. Rather, she demonstrated her understanding of the charges by extensively cross-examining the Prosecution's witnesses until she absented herself from the jurisdiction.

31. The Respondent also challenges the Appellant's reliance on ***the Ernest Thompson Case***. Counsel submits that that decision concerned charges of Willfully causing financial loss to the State and cannot govern the present appeal in respect of offences with materially distinct elements. It is further argued that the decision was delivered after the commencement of the present proceedings and ought not to be applied retrospectively. In any event, counsel contends that any defect in the charges was no more than a technical irregularity cured by the evidence led at trial and occasioned no miscarriage of justice within the meaning of section 31(2) of the Courts Act, 1993 (Act 459). On that basis, the Respondent submits that the convictions and sentences ought not to be disturbed.

32. The Respondent firmly rejects the contention that the Prosecution failed to prove its case. It submits that the evidential burden imposed by section 11(2) of the Evidence Act, 1975 (NRCD 323), was discharged through the testimony of seven witnesses and several bundles of documentary exhibits, all of which were subjected to cross-examination. Upon a full assessment of that evidence, the trial court was, in the Respondent's submission, entitled to conclude that the Appellant had a case to answer.

33. By way of example, in relation to the alleged stealing of funds earmarked for sensitisation programmes, the Respondent submits that the Appellant and the 2nd Accused failed to retire imprests received in 2015 and 2016 in accordance with MASLOC's internal protocols. The Respondent further relies on responses from MASLOC Regional Directors to audit queries, which indicated that no such programmes had taken place, notwithstanding that the Appellant and the 2nd Accused continued to raise memoranda for the release of funds. As regards the GHS500,000.00, the Prosecution tendered the acknowledgment letter as Exhibit A, which, it says, prima facie established that the money refunded by Obaatanpa was received by MASLOC. The Respondent therefore submits that the trial judge was justified in requiring the Appellant to answer the evidence concerning the authenticity of the signature and the receipt of the funds. The loss of those funds, it is argued, also grounded the counts of Willfully causing financial loss to the State.

34. The Respondent accordingly submits that, once the trial judge found that the Prosecution had established a case for the Appellant to answer, the evidential burden shifted to the Appellant to adduce evidence capable of raising a reasonable doubt as to the facts alleged against her. Having absconded, she led no defence and provided no evidence capable of meeting that burden. Finally, the Respondent submits that it proved, beyond reasonable doubt, all the essential elements of the offences charged. In the absence of contrary evidence or any reasonable explanation from the Appellant, the learned trial judge is said to have committed no error in convicting and sentencing her in absentia. The Respondent therefore invites this Court to dismiss the appeal in its entirety as being without merit.

IV. ANALYSIS OF THE GROUNDS OF APPEAL:

a. THE RESPONDENT'S PRELIMINARY LEGAL OBJECTION

35. My Lords, as I previously mentioned, the Respondent raised and contended a preliminary legal objection in its written address. The Respondent asserted that the Appellant was a fugitive from justice who had absconded from the jurisdiction of this Court and consequently, was not entitled to invoke the appellate jurisdiction of this Court to challenge her conviction and sentence. The immediate observation that strikes me is not the substance of the objection but the procedure in raising and arguing the objection.

36. The procedure for raising any preliminary legal objection in an appeal to this Court is provided under Rule 16 of the Court of Appeal Rules, 1997 (C.I. 19) which is reproduced with emphasis:

(1) A respondent who intends to rely on a preliminary objection to the hearing of the appeal shall give the appellant three clear days notice before the hearing of the preliminary objection, setting out the grounds

of objection, and shall file the notice in the Form 8 set out in Part One of the Schedule.

(2) Where the respondent fails to comply with subrule (1), the Court may refuse to entertain the objection or may adjourn the hearing at the cost of the respondent or may make any other appropriate order.

37. Rule 16 C.I. 19 is not a mere procedural adornment. It is a rule directed to the elementary fairness of appellate process. Where a Respondent proposes to resist the hearing of an appeal by preliminary objection, the rule requires three clear days' notice to the Appellant, a statement of the grounds relied upon and the filing of the prescribed Form 8. Its purpose is plain, which is that an Appellant is not to be confronted, at the hearing, with an unheralded challenge to the competence of his appeal. The language of Rule 16(1) is mandatory; and in the ordinary case, a preliminary objection must therefore be advanced by the distinct notice contemplated by the rule, not by way of first appearance in written submissions or by oral assertion from the Bar. The consequence of non-compliance is, however, not cast in absolute terms. Rule 16(2) confers on the Court a measured discretion: it may decline to entertain the objection, adjourn the hearing at the respondent's cost, or make such order as the justice of the case requires.

38. The jurisprudence of this Court has treated Rule 16 in a manner faithful both to its discipline and to its purpose. In the unreported judgment of this Court in **Raphael Cubage v. Evame Motor (Gh) Ltd per the Managing Director in Suit No. H1/114/023 dated 21st December 2023**, this Court differently constituted regarded the respondent's failure to challenge the form or substance of the notice of appeal by a formal Rule 16 notice as a forfeiture of the right to take the point. The decision gives practical content to the rule: written submissions are not a surrogate for the notice which the Rules prescribe. The same principle informed **Adu 2 Company Ltd v Kwaku Duku [2023] DLCA 17537**, where an objection to the propriety of the notice of appeal was taken only in written submissions and without either a notice of preliminary objection or a notice of variation. This Court held that the objection was not properly before it and struck it out.

39. This Court has, however, been equally careful not to convert Rule 16 into an instrument of sterile technicality. Non-compliance is a serious matter, but it is not invariably conclusive. In **Nana Alvin Atta & Stephanie Ama Evelyn Dwimoh v Stephen A.L. Dwimoh Jnr. & Albert Dwimoh Jnr. [2025] DLCA 17904**, this Court treated Rule 16(2) as conferring a real, and not merely notional, discretion. Although the objections had not been brought by the prescribed notice, this Court waived the default because the objections went to capacity and jurisdiction, being matters which bear upon the very foundation of this Court's authority and proceeded to determine them.

40. My Lords, the decision in ***Nana Alvin Atta*** above is not a licence to disregard Rule 16. It affirms, rather, the proper order of analysis: a respondent ought first to comply with Rule 16(1); failure to do so will ordinarily expose the objection to rejection or to being struck out; but the Court may, where justice so demands, relieve against the default, especially where the objection concerns capacity or jurisdiction.

41. It is my opinion therefore that the balance struck by Rule 16 is accordingly principled rather than mechanical. Its requirements of notice and Form 8 vindicate the appellant's right to know, in advance of the hearing, the nature of the competence objection to be met. The jurisprudence on Rule 16 demonstrate that the Court will not readily permit a respondent to achieve by written submissions what the Rules demands to be done by formal notice.

42. However, Rule 16(2) preserves the Court's ability to prevent procedure from defeating justice. Moreover, ***Nana Alvin Atta*** shows that an improperly raised objection may nevertheless be entertained where the character of the objection, the demands of fairness, and the orderly administration of appellate justice require it. The practical position is therefore clear. A respondent who intends to take a preliminary objection should file Form 8, identify each ground with precision, and ensure that the appellant receives three clear days' notice. A party who relies only on written submissions assumes a material risk that the objection will not be heard. Where the point is jurisdictional, or concerns capacity, the prudent course is to invite the Court expressly to exercise its discretion under Rule 16(2).

43. The Respondent did not comply with the mandatory procedure for raising a preliminary legal objection under Rule 16(1) of C.I. 19 because it failed to file a formal notice per Form 8 setting out the grounds of objection with precision while ensuring that the Appellant had three clear days' notice. Nonetheless, the objection goes to the Appellant's capacity to invoke this Court's appellate jurisdiction, and the Appellant addressed it in her Reply. No prejudice has therefore been occasioned to her. I would therefore hold that the Respondent's non-compliance with Rule 16(1) of C.I. 19 is not, in the circumstances of this appeal, fatal. I would accordingly entertain the preliminary objection by evaluating its merits.

44. An appeal is, in substance, an invocation of a Superior Court's jurisdiction to set aside, reverse, or vary a decision said to have been wrongly made by the court or tribunal below. The jurisdiction of this Court to hear and determine appeals is not sourced from its inherent jurisdiction but rather from the Constitution, 1992 and Act 459. It is provided under Article 137 of the Constitution, 1992 as follows:

(1) The Court of Appeal shall have jurisdiction throughout Ghana to hear and determine, subject to the provisions of this Constitution, appeals from a judgement, decree or order of the High Court and Regional Tribunals and such other appellate jurisdiction as may be conferred on it by this Constitution or any other law.

(2) Except as otherwise provided in this Constitution, an appeal shall lie as of right from a judgement, decree or order of the High Court and a Regional Tribunal to the Court of Appeal*.* (Emphasis suggested)

45. It is necessary at the outset to recall that there is no inherent right of appeal at common law, our emphasis is on Article 137(2) as reproduced and Section 11 of Act 459, both provisions give an aggrieved person the right to appeal a decision from the High Court to this Court. The point was stated with clarity in **Re Yendi Skin Affairs, Yakubu II v. Abdulai [1984-86] 2 GLR 226** that such rights of appeal as exist are creatures of statute; and their exercise is necessarily conditioned by the statute which confers them. In **Frimpong v. Poku [1963] 2 GLR 1 (SC)**, the Supreme Court stated the principle in these terms:

"A right of appeal is always conferred by statute and when the statute conferring the right lays down the conditions precedent to the vesting of

that right in a litigant, it is essential that those conditions must be strictly performed, otherwise the right does not become vested".

46. There is no provision in the Constitution 1992, which excludes from this Court's appellate jurisdiction a person convicted and sentenced in absentia. Nor has the Respondent cited any Ghanaian authority which compels such a conclusion. The right of appeal conferred by Article 137 of the Constitution and section 11 of Act 459, is exercisable upon compliance with the conditions precedent prescribed by law. Having examined the Record of Appeal, I am satisfied that the Appellant complied with those requirements. Her notice of appeal was filed within time and in the manner prescribed by Rules 8, 38 and 39 of C.I. 19, as amended. That compliance vested in her the right to invoke the jurisdiction of this Court. It follows that the Respondent's preliminary objection is without merit and is dismissed.

b. SUBSTANTIVE GROUNDS OF APPEAL

47. Counsel for the Appellant argued grounds *b* to *h* with grounds *a* in his written submission. However, grounds *b* to *h* allege errors of law in the Appellant's conviction on all charges without any particulars contrary to Rule 8(4) of C.I. 19. This Rule states, '*where the grounds of an appeal allege misdirection or error in law,* ***particulars of the misdirection or error shall be clearly stated***.' Furthermore, Rule 8(6) of C.I. 19 permits this Court to strike out grounds which are vague or discloses no reasonable grounds of appeal as follows:

No ground which is vague or general in terms or which discloses no reasonable ground of appeal shall be permitted*, except the general ground that the judgment is against the weight of the evidence; and* ***any ground of***

appeal or any part of the appeal which is not permitted under this rule may be struck out by the Court of its own motion or on application by the responden*t.***

48. My Lords, I think it is appropriate to restate grounds *b* to *h* in the grounds of appeal:

b) The court below erred in convicting the 1st Accused/Appellant for conspiracy to steal and stealing.

c) The court below erred in convicting the 1st Accused/Appellant for conspiring to cause financial loss as well as causing financial loss to the State.

d) The court below erred in convicting the 1st Accused/Appellant for causing loss to public property

e) The court below erred in convicting the 1st Accused/Appellant for improper payment of public funds.

f) The court below erred in convicting the 1st Accused/Appellant for unauthorized commitment resulting in financial obligation to Government.

g) The court below erred in convicting the 1st Accused/Appellant for money laundering

h) The court below erred in convicting the 1st Accused/Appellant for contravention of the Public Procurement Act

49. There is a certain incongruity when the Appellant complains that the particulars of offences contained in the charge sheet were insufficiently particularised, yet the Appellant advances grounds of appeal alleging errors of law without identifying, with any corresponding precision, the error said to have been committed. That defect is especially apparent in grounds *b* to *h*. Although the Appellant elected to argue the seven grounds of appeal together under '*a*', the omnibus ground, that forensic course cannot cure grounds which, on their face, disclose no reasonable ground of appeal. I would therefore exercise the power conferred on this Court by Rule 8(6) of C.I. 19, and strike out grounds *b* to *h*. Put shortly, a ground which merely asserts that '*the court below erred'*, without more, is not a tenable ground of appeal within the contemplation of the Rules of this Court. Those grounds are accordingly struck out.

50. My Lords, I now proceed to evaluate the omnibus ground '*a*' which is restated:

a) The conviction and sentence of the 1st Accused/Appellant for the offences of conspiracy to steal, stealing, conspiracy to cause financial loss to the state, causing financial loss to the State, causing loss to public property, improper payment of public funds, unauthorized commitment to resulting in financial obligation to Government, money laundering and breach of the Procurement Act is unreasonable and cannot be supported having regard to the evidence on record.

DEFECTIVE CHARGE SHEET

51. The Appellant claims that count 5 to 71 are defective because the offenses in those charges do not show any acts, omissions, or transactions involving the Appellant. The question for determination is one of recurring practical importance in the administration of criminal justice: at what point does a defect in a charge sheet cease to be a matter of form, curable by the ordinary processes of trial and become a matter of substance, fatal to the conviction and to any sentence founded upon it? The answer cannot be supplied by intuition. It must be derived from the text of Act 30 and from the manner in which the courts have applied that text to the facts before them.

52. Two provisions of Act 30 lie at the heart of this inquiry, sections 112 (1) to (4) and 406 of the Act. They are reproduced as follows:

Section 112 - Statement of charges in necessary documents

(1) Subject to the special rules as to indictments mentioned in this section, ***a charge****, complaint, summons, warrant, or any other document laid, issued or made for the purpose of or* ***in connection with proceedings before a Court for an offence shall be sufficient if it contains a statement of the offence with which the accused person is charged together with the particulars necessary for giving reasonable information as to the nature of the charge and although there may be a rule of law to the contrary it shall not be necessary for it to contain any further particulars other than necessary particulars.***

(2) The statement of offence shall describe the offence shortly in ordinary language, avoiding as far as possible the use of technical terms, and without necessarily stating all of the essential elements of the offence and where the offence is one created by an enactment may contain a reference to the enactment.

(3) Where an enactment applies to an act committed before its commencement a charge under the enactment in respect of that act shall contain a reference to the section of the enactment under which the accused is charged, although the

enactment was not in force at the time when that act is alleged to have been committed.

(4) After the statement of the offence, necessary particulars of the offence shall be set out in ordinary language, in which the use of technical terms is not required.

Section 406 - Finding or sentence when reversible by reason of error of omission

(1) Subject to this Part a finding, sentence or order passed by a court of competent jurisdiction shall not be reversed or altered or altered on appeal or review on account

(a) of an error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgement, or any other proceedings before or during the trial or in an enquiry or any other proceedings under this Act, *or*

(b) of the omission to revise a list of jurors in accordance with Part Five, or

(c) of a misdirection in a charge to a jury, ***unless the error, omissions, irregularity, or misdirection has in fact occasioned a substantial miscarriage of justice.***

(2) In determining whether an error, omission or irregularity has occasioned a substantial miscarriage of justice, the Court shall consider the question whether the objection could and should have been raised at an earlier stage in the proceedings.

53. In my judgment, section 112 states the essential content of a valid charge. The statement of offence and the accompanying particulars must together provide the accused with reasonable information of the case she is required to meet. Section 406 performs a different, though related, function. It prevents an appellate court from setting aside a finding, sentence, or order merely because of an error, omission, or irregularity in the charge, unless that defect has in fact occasioned a substantial miscarriage of justice.

54. It is important to keep those provisions within their proper limits. Section 112 does not require forensic particularity. It requires sufficient notice. The Prosecution is not obliged to plead its evidence into the charge sheet, still less to anticipate every matter which may emerge at the trial: see **Republic v Ali Yusuf Issa (No. 1 & No.2) [2003-2004] 1 SCGLR 189 & 174 and Ali Yusuf Issa v The Republic (No. 1 & No. 2) [2003-2004] 2 SCGLR 189 & 174.** Section 406, correspondingly, does not place every charge sheet beyond scrutiny. It protects only those defects which, upon examination, have caused no real prejudice. The two provisions therefore operate together: section 112 supplies the standard by which the adequacy of the charge is judged; section 406 determines the consequence where some imperfection is shown but no substantial injustice has resulted.

55. In **Republic v Ernest Thompson & 4 Ors**, Tanko JSC made clear that whether a charge has been sufficiently particularised is a question to be determined case by case. That approach is consistent with the earlier decisions of the Supreme Court in **Republic v Ali Yusuf Issa (No. 1 & No. 2)**. Where, in substance, the accused has been told what she is alleged to have done, when she is alleged to have done it, and the statutory provision said to have been contravened, surplusage, inelegance, or imprecision in expression will not ordinarily invalidate a conviction. If an objection is to be taken, it should generally be taken in limine, so that any genuine deficiency may be cured by amendment before the trial proceeds. Absent demonstrated prejudice, an appellate court should not disturb a conviction on such a ground alone.

56. That analysis must not, however, obscure a more serious class of case. Some defects are not matters of form at all. They are defects of substance. A charge which discloses no known offence, omits an essential ingredient of the accusation, or leads to a conviction unlawful in law cannot be saved by section 406. In such a case, the premise on which the curative provision rests that no substantial miscarriage of justice has occurred is absent. See the case of **Osei v**. **The Republic (No.2) [1971] GLR 449**.

57. The governing principle may therefore be stated shortly. First, the adequacy of a charge sheet is assessed by asking whether, viewed in its setting and in light of the trial as a whole, it gave the accused reasonable notice of the case to be met. Secondly, where the defect is technical, superfluous, or curable, and no real prejudice is shown, section 406 of Act 30 preserves the conviction and any sentence properly founded upon it. Thirdly, where the defect is fundamental because it deprives the charge of legal substance or withholds true notice of an essential element of the offence, the conviction cannot stand, notwithstanding section 406, and any sentence resting upon it must be set aside.

58. It is against that framework that this Court must determine whether the charge sheet gave the Appellant sufficient notice of the offences alleged against her. I have carefully reviewed all the 78 charges as presented by the Respondent, the same has been reproduced extensively in paragraph 12 in this judgment and in my view all the charges meet the required threshold in section 112 except the charges on conspiracy to cause financial loss to the state, causing financial loss to the state and Causing Loss to Public Property.

59. The impugned counts are Counts 36, 37, 38, 39, 40, 41, 42, 47 and 64, each alleging Willfully causing financial loss to the State contrary to section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29), against the Appellant alone. Counts 43, 45, 48, 52, 54, 56, 58, 60, 62, 65 and 67 allege conspiracy to cause financial loss to the State contrary to sections 23(1) and 179A(3)(a) of Act 29; Counts 44, 46, 51, 53, 55, 57, 59, 61, 63, 66 and 68 allege causing financial loss to the State contrary to section 179A(3)(a) of Act 29 against the Appellant and the 2nd Accused. Counts 69, 70 and 71, alleging causing loss to public property against the Appellant alone, are likewise defective.

60. In my opinion, the counts alleging conspiracy to willfully causing financial loss to the State and causing financial loss to the State are incurably deficient. They omit an indispensable ingredient of the offence: the particular act or omission of the Appellant said to have been Willfully committed and by which the alleged financial loss was occasioned. The Appellant was charged under section 179A(3)(a) of Act 29, which provides:

Section 179A - Causing Loss, Damage or Injury to Property

(1) A person who by a wilful act or omission causes loss, damage or injury to the property of a public body or an agency of the Republic commits a criminal offence.

(2) A person who in the course of a transaction or business with a public body or an agency of the Republic intentionally causes damage or loss

whether economic or otherwise to that body or agency commits a criminal offence.

(3) A person commits a criminal offence through whose wilful, malicious or fraudulent action or omission

(a) the Republic incurs a financial loss, *or*

(b) the security of the Republic is endangered.

(4) In this section "public body" includes the Republic, the Government, a public board or corporation, a public institution and a company or any other body in which the Republic or a public corporation or other statutory body has a proprietary interest.

61. In the case of **Ibrahim Adam & Ors v. The Republic [2003-2005] 2 GLR 661** the essential elements of Willfully causing financial loss to the state was neatly set out by Afreh JSC as follows:

i. That there has been a financial loss

ii. That the loss was to the state

iii. ***That the loss was caused through the action or omission of the accused*** *and the accused intended or desired to cause the loss or foresaw the loss as virtually certain and took an unjustifiable risk of it or foresaw the loss as the probable consequence of his act and took unreasonable risk of it or if he had used reasonable caution and observation it would have appeared to him that his act would probably cause or contribute to cause the loss.*

62. A cursory examination of the conspiracy counts discloses the defect. Save for the dates, the particulars are materially indistinguishable. They identify no conduct by which the Appellant and the 2nd Accused are alleged to have agreed to act together on the relevant date, nor the specific loss said to have flowed from that agreement. Counts 45, 54 and 65, selected at random, illustrate the point:

COUNT FORTY - FIVE

STATEMENT OF OFFENCE:

Conspiracy to commit crime namely, willfully causing financial loss to the State contrary to Sections

PARTICULARS OF OFFENCE:

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 21st April, 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose to Willfully cause financial loss to the State.

COUNT FIFTY –FOUR

STATEMENT OF OFFENCE:

Willfully Causing Financial Loss, to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 20th July, 2016 in Accra in the

Greater Accra Region agreed to act together with a common purpose to Willfully cause financial loss to the State.

COUNT SIXTY - FIVE

STATEMENT OF OFFENCE:

Conspiracy to commit crime namely, willfully causing financial loss to the State contrary to Sections 23(1) and 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

1) Sedina Christine Tamakloe Attionu 2) Daniel Axim on or about 1st December, 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose of Willfully causing financial loss to the State.

63. The counts charging the Appellant alone with Willfully causing financial loss to the State suffer from the same fundamental infirmity. Counts 36, 39 and 47 may be taken as representative:

COUNT THIRTY – SIX

STATEMENT OF OFFENCE:

Willfully Causing Financial Loss, to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu on or about 1st April, 2015 in Accra in the Greater Accra Region Willfully caused financial loss of GH¢2,730 to the State.

COUNT THIRTY – NINE

STATEMENT OF OFFENCE:

Willfully Causing Financial Loss, to the State contrary to Section 179A(3)(a) of the Criminal Offences

Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu on or about 15th July, 2015 in Accra in the Greater Accra Region Willfully caused financial loss of GH¢20,000 to the State

COUNT FORTY - SEVEN

STATEMENT OF OFFENCE:

Willfully Causing Financial Loss, to the State contrary to Section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE:

Sedina Christine Tamakloe Attionu on or about 21st April, 2016 in Accra in the Greater Accra Region Willfully accused financial loss of GH¢186,000 to the State.

64. Those counts disclose no wilful conduct by the Appellant, whether by act or omission, causative of financial loss to the State. The reasoning and principles applied by this Court and approved by the Supreme Court in **the Ernest Thompson Case**, govern this class of charges. On the authority of **Donkor v. The State [1964] GLR 598** and **the Ernest Thompson Case,** I hold that the charges failed to inform the accused, in sufficient detail, of the nature of the offence; nor was the deficiency cured by information supplied outside the charge sheet. Where the particulars omit the statutory essence of the offence, here, the wilful conduct required by section 179A(3)(a), the defect is fatal and cannot be remedied by evidence at trial.

65. Section 2 of the Public Property Protection Act, 1977 (SMCD 140) provides:

Section 2 - Loss caused by carelessness, gross negligence or dishonesty

(1) ***A person who by carelessness, gross negligence or dishonesty misapplies or causes*** *the dissipation of or loss or damage to public property, commits an offence and is liable on conviction to a term of imprisonment not exceeding five years or to a fine not exceeding one thousand penalty units or to both the fine and the imprisonment*.

66. The same conclusion follows in respect of the counts alleging causing loss to public property contrary to section 2 of SMCD 140. The particulars do not identify the specific conduct, amounting to gross negligence, by which the Appellant is said to have caused the loss of public property. Further, the alleged period extends from 2016 to 2018, although the Appellant ceased to be Chief Executive Officer of MASLOC on 7th January 2017. Counts 69, 70 and 71 do not reveal the act or omission constituting gross negligence during her tenure, still less any conduct continuing thereafter.

67. The Respondent appears to accept that some defects exist, particularly in the counts alleging Willfully causing financial loss to the State but contends that any such defect is a mere technicality cured by the evidence led at trial per section 31(2) of Act 459. I cannot accept that submission. The constitutional command in Article 19(2)(d) of the 1992 Constitution, that an accused be informed, in detail, of the nature of the offence charged is mandatory and anterior to any curative provision in section 31(2) of Act 459. Article 19(2)(d) provides:

A person charged with a criminal offence shall –

(d) be informed immediately *in a language that he understands**, and in detail;***

of the nature of the offence charged;

68. It follows that Counts 36, 37, 38, 39, 40, 41, 42, 47 and 64, charging the Appellant alone with Willfully causing financial loss to the State contrary to section 179A(3)(a) of Act 29, are fundamentally defective. So too are Counts 43, 45, 48, 52, 54, 56, 58, 60, 62, 65 and 67, alleging conspiracy to cause financial loss to the State contrary to sections 23(1) and 179A(3)(a) of Act 29, and Counts 44, 46, 51, 53, 55, 57, 59, 61, 63, 66 and 68, alleging causing financial loss to the State contrary to section 179A(3)(a) of Act 29 against the Appellant and the 2nd Accused. Counts 69, 70 and 71, alleging causing loss to public property against the Appellant alone, are equally defective. The convictions and sentences founded upon those counts cannot stand. They are accordingly set aside.

CONSPIRACY TO STEAL AND STEALING:

69. The Respondent alleges a series of dishonest appropriations of MASLOC funds by the Appellant, contrary to section 124(1) of Act 29. The Appellant contends that the Respondent failed to discharge the evidential burden imposed by NRCD 323. The Respondent maintains the contrary; and the learned trial judge held that the offences of conspiracy to steal and stealing had been made out. It is therefore necessary to examine the evidence said to establish those alleged dishonest appropriations.

70. Under Ghanaian criminal law, stealing is committed where a person dishonestly appropriates property belonging to another. Section 120(1) of Act 29 defines *dishonest appropriation* as follows:

> *'An appropriation of a thing is dishonest if it is made with an intent to defraud or if it is made by a person without claim of right, and with a knowledge or belief that the appropriation is without the consent of some person for whom he is trustee or who is owner of the thing, as the case may be, or that the appropriation would, if known to any such person, be without his consent.'*

The acts which may constitute appropriation are specified in section 122 of Act 29. Subsection (2), of direct relevance here, provides:

> *'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 some person may be deprived of the benefit of his ownership, or of the benefit of his right or interest in the thing, or in its value or proceeds, or any part thereof".*

It follows that, where the charges allege the stealing of a specified sum, the prosecution must prove, to the evidential standard, that the accused in fact dishonestly appropriated that very sum.

THE GHS500,000.00 MASLOC INVESTMENT IN OBATAANPA MICROFINANCE

71. The central issue is whether the Appellant in fact received the GHS500,000.00 belonging to MASLOC. The Respondent tendered Exhibit A through PW2. Exhibit A is a purported acknowledgement letter dated 28th August 2014 and bearing the Appellant's signature. PW2 testified that he obtained the letter from MASLOC's secretariat after it had been handed to him by the Appellant's secretary:

Q: After you have driven Mr. Seth Asiedu Obugyei [PW3] to Baatsona Total to return Five Hundred Thousand Ghana Cedis in Ghana Must Go bag to Madam Sedina Tamakloe, did anything happen?

A: Yes my lady, few weeks later the manager of Obaatanpa prompted us they need receipt for the money because auditors will worry them so Mr. Seth Asiedu liase the information to Madam Sedi, so upon several calls to Madam, one afternoon Mr. Asiedu told me that Madam said we should go for a letter at her secretariat at MASLOC office so when I went I met Madam Seina's secretary, so she handed over a white envelope small one (sic) which was sealed and when I opened it, it was an acknowledgement letter for the receipt of Five Hundred Thousand Ghana Cedis.

So I made two copies of the receipt, I took a copy and gave a copy to Nana (Mr. Seth Asiedu) and sent the original to Obaatanpa. When the issues started and EOCO called us I called for the original copies (sic) but the manager could not get it for me so I made a copy of mine and gave it to MASLOC and EOCO*.*

72. In her caution statement dated 15th November 2017, Exhibit AM1, the Appellant denied authorship of Exhibit A, stating that she ***'cannot vouch that the letter was signed by me eventhough [sic the signature looks like mine'.*** That denial required the Respondent to dispel any reasonable doubt as to the authenticity and genuineness of Exhibit A. It did not do so. Instead, the learned trial judge placed upon the Appellant the burden of proving whether the signature was hers and of explaining whether she had received the GHS500,000.00. At page 326 of volume 2 of the ROA, the learned trial judge stated:

> '***In those circumstances, it was held that A1 had a case to answer regarding GHS500,000.00 in order that she throws light on whether or not the signature is hers*** *and any explanation of whether or not she indeed received the GHS500,000.00'*

73. The learned trial judge did not undertake any adequate analysis of Exhibit A capable of supporting a finding that it was authored by the Appellant, notwithstanding the following observation in the judgment: **'*The second defence put up by A1 seems to be an outright denial***, *or that she "cannot vouch that the letter was signed by me eventhough [sic] the signature looks like mine'*

The learned trial judge continued: '*This Court has to assess the document as is and make a determination as to whether it satisfies the requirement.* ***In my view, the document does satisfy the evidential requirement, especially in the light of the statement of AI, that she "cannot vouch that the letter was signed by me eventhough [sic] the signature looks like mine…." And her absence when required****. This Court is not unaware of the fact that there is no obligation on an accused person to adduce evidence to prove his or innocence.'(Emphasis)*

74. My Lords, the very suggestion that the Appellant was required to prove whether the signature on Exhibit A was hers demonstrates that doubts attended its genuineness. It was therefore erroneous, having regard to sections 11(2) and 13(1) of NRCD 323, to require the Appellant to prove or disprove her signature. The Respondent could not establish a prima facie case of dishonest appropriation of GHS500,000.00 by reliance on Exhibit A while its authenticity remained doubtful. Nor was the Appellant required to supply evidence in aid of the Respondent's case.

75. My Lords, Article 19(10) of the Constitution states that *'no person who is charged with an offence shall be compelled to give evidence at the trial.'* This constitutional guarantee is expressed in terms admitting of no qualification. That provision embodies a constitutional immunity of the first importance. It protects the Accused's silence, and leaves to her, and to her alone, the election whether to testify. It follows that no court may require an accused person to enter the witness box at any point in the criminal process. From arrest until conviction, the choice whether to give evidence remains exclusively hers. She may not be compelled to answer the charge by her own testimony, still less to furnish material capable of advancing the Prosecution's case. The privilege against compelled self*Sedina* incrimination is not a matter of trivial practice, for it is a substantive constitutional guarantee, binding upon every court.

76. This legal proposition as explicated above is consistent with the decision of this Court in **the Ato Forson Case**, where Ackaah-Boafo JA, as he then was, stated:

My Lords, in the first paragraph of my opinion, I referred to the quote that an accused person has the right not to be forced into assisting in his or her own prosecution. ***In my opinion, that protection afforded to accused persons is anchored in the overarching principle against self-incrimination, which is firmly rooted in our constitution as a fundamental principle of justice under Article 19(2)(c) and the common law.'***

77. My Lords, it is my opinion that since Exhibit A was said by the Respondent to emanate from MASLOC, a public body which was disputed by the Appellant, doubts existed about the authenticity of Exhibit A. Therefore, it ought to have been tested by the evidential rules governing the authentication of official documents. Section 175(1) of NRCD 323 permits secondary evidence of public documents in these terms:

Copies of official writings

(1) A copy of a writing which is authorised by law to be filed or recorded and has in fact been filed or recorded in an office of a public entity or which is a public record, report, statement or data compilation is admissible to the same extent as an original to prove the content of the writing if

(a) an original or an original record is in an office of a public entity where items of that nature are regularly kept; and

(b) the copy is certified to be correct by the custodian or other person authorised to make the certification, and that certificate is authenticated, or the copy is testified to be a correct copy by a witness who has compared it with an original.

(2) Where a copy which complies with subsection (1) cannot be obtained by the exercise of reasonable diligence, other evidence of the content of the writing is admissible to the same extent as an original.

76. That provision contemplates two categories of public document: first, private writings which acquire official character by being filed or recorded pursuant to law in a public office, such as wills; and secondly, writings which are themselves public records, reports, statements or data compilations, typically governmental records or judgments of a court. Exhibit A, if it emanated from MASLOC, fell within the latter category.

77. The admissibility of such a document is conditioned by section 175(1)(a) and (b) of NRCD 323. The requirements may be stated shortly:

a. the original must have been filed or kept in the office of a public entity where documents of that kind are ordinarily maintained;

b. the copy tendered in place of the original must be certified as accurate by the custodian, or by another person authorised to certify it, and the certificate must itself be authenticated against forgery: see Order 38 rule 9 of CI 47; or

c. a competent witness who has compared the copy with the original must testify to the correctness of the copy.

78. Section 175(2) further provides that, where a compliant copy cannot be obtained despite reasonable diligence, other evidence of the contents of the writing may be admitted to the same extent as the original. Such evidence may include a copy or oral testimony. This is the principle commonly described as the best evidence rule: see Black's Law Dictionary, Eighth Edition, Bryan A Garner.

79. The Respondent led no proper evidence authenticating Exhibit A. There was no evidence that it had been certified as accurate by any competent MASLOC official. Its reference number, '*MSLC/FD/OB/28/08/14.002*', itself suggested that MASLOC would retain a version of the correspondence; yet no such version was produced. Nor did PW1 or PW5, both MASLOC officials, testify to the correctness of Exhibit A, for neither had seen any MASLOC copy against which a comparison could be made. Their evidence was that Exhibit A came to their attention only during EOCO's investigations through copies supplied by

PW2 and PW3. Exhibit A therefore did not satisfy the mandatory requirements of section 175 of NRCD 323.

80. Since Exhibit A was admitted without objection, the remaining question is the weight properly to be attached to it. The Appellant's subsequent conduct is difficult to reconcile with the document's contents. Exhibits C and D, tendered through PW5, show that the Appellant signed letters to Obaatanpa Microfinance Co Ltd demanding interest on the GHS500,000.00 investment. Exhibit C, dated 9th June 2015, was signed by the Appellant and Phil Cliff Aye-Gatsey, Head of Credit Risk. Exhibit D was signed by the Appellant and PW5, Head of Finance. PW3 admitted receiving those letters and at least three other MASLOC demands for interest between January and July 2015. Although PW3 claimed that he reminded the Appellant by WhatsApp that he had returned the cash to her in 2014, and that she replied that it would be addressed, no WhatsApp message was produced, nor any letter to MASLOC acknowledging any cash refund: see page 132 of volume 3 of the ROA.

81. On the evidence as a whole, I am not satisfied that the Respondent proved beyond reasonable doubt that the Appellant received the GHS500,000.00. If receipt of the sum was not proved, dishonest appropriation of that sum could not follow. The conviction and sentence on this count must therefore be set aside which I accordingly do so.

FUNDS INTENDED FOR SENSITIZATION, MONITORING, TRAINING & FINANCIAL LITERACY

82. The Appellant and the 2nd Accused were also charged with stealing GHS1,816,000.00, notwithstanding that approval had been given for

GHS1,706,000.00 for sensitisation and monitoring programmes for selected beneficiaries across Ghana in 2015 and 2016. The Appellant was further alleged to have appropriated GHS248,280.00 intended for the 2015 training, sensitisation and financial literacy programme, and GHS50,000.00 said to have been received from PW4, her driver, for the same project. The Respondent's case was that the Appellant and 2nd Accused oversaw the project, that funds were released for it, but that no such sensitisation and monitoring programme was held.

83. The 2nd Accused prepared memoranda requesting the release of funds for the various programmes. Those requests were approved by the Appellant, and payments were made for that purpose. The Respondent tendered a series of memoranda, approvals and payment documents, including Exhibits E, F, G, H, K, L, M, N, P, Q, S and T. In their caution statements, the Appellant and the 2nd Accused maintained that the funds were applied to their stated purpose. PW1, PW5 and PW6, the auditor, gave evidence to the contrary.

84. The Respondent tendered a list of beneficiaries for the sensitisation and monitoring programmes. However, PW7 of EOCO accepted in cross-examination that none of those beneficiaries had been contacted to confirm whether the programme had taken place:

Q: During investigations you were furnished with several documents listing several towns under the sensitization programme, is that not so?

A: That is so

Q: Did the investigation by EOCO involve any attempt to speak to any of these persons listed in the several communities on the documentation furnished to EOCO?

A: ***The sensitization programme was organized for 85,300 participants with a budget of 1.7 million Ghana cedis.*** *As part of the programme, we do not have contact numbers of the so-called beneficiaries of these sensitization programme.* ***If we had, at least we might have placed a call to one of them to confirm or deny whether indeed the programme was organized and they were given GHS20 and T&T***

85. That admission is significant. It means that EOCO neither confirmed nor refuted the Appellant's assertion that the MASLOC programmes took place. It is also striking that the Respondent called no MASLOC Regional Director to give evidence and be tested in cross-examination but instead it relied on the evidence of PW6 and PW7 based on information given to them by the Regional Directors. PW7 testified as follows:

Q: You have only concluded that there was no sensitization because you claim that the funds used for the exercise have not been accounted for, is that not so?

A: That is not so.

Q: What is the case then?

A: During the course of our investigations, EOCO interviewed three regional directors of MASLOC and as part of the audit conducted by Baffour Awuah and Associates, they also spoke to all regional directors and they indicated that there was no sensitization programme organized*. Also, even though an amount of 1.7 million Ghana cedis was approved for the programme there is no evidence to suggest that the monies were used for the stated purpose. There is also no document in terms of the beneficiaries who received the T& T if they attended the programme.*

Q. As we sit here, there is no means of establishing whether or not these regional officers spoke to EOCO or Baffour Awuah and Associates.

A. That is not so.

Q. What information do we have beyond what you have stated in court?

A. As part of the audit report, this information I have given to the court is part of the audit report. ***Also, the three Regional Directors who came to EOCO gave statements.***

Q. I am saying that before this court, the only information is based on what you and Baffour Awuah have said.

A. That is not so.

Q. Indeed there is no testimony before this court by any Regional Officer of MASLOC, I am putting that to you.

A. That is so my lady.

86. By the operation of section 60(1) of NRCD 323, a witness must speak only to matters within their personal knowledge. Section 116(d) of NRCD 323 defines hearsay as '*evidence of a statement other than a statement made by a witness while testifying in the action at the trial offered to prove the truth of the matter stated.*' Therefore, statements made outside the courtroom cannot be admitted as proof of their assertions, as it would allow the court to rely on untested assertions. However, evidence can be admitted establishing that a statement was made, regardless of its truth, if its relevance lies in the fact of its utterance. See the Supreme Court case of **Opanin Osei Akwasi (Substituted By Badu**

Dankwah Alias James Danquah) v. Kwadwo Dwemoh (2023) Civil Appeal No. J4/37/2022.

87. PW6 and PW7 had no personal knowledge of MASLOC's activities during the material period. Their assertion that no sensitisation or training programmes had taken place was derived from what they said had been communicated to them by MASLOC Regional Directors and was tendered for its truth. In my opinion, that evidence was hearsay. It could be received, if at all, only as firsthand hearsay under section 118 of the Evidence Act, provided the statutory conditions were satisfied:

Section 118 - First-hand hearsay

(1) For the purposes of section 117, evidence of a hearsay statement is admissible if

(a) the statement made by the declarant would be admissible had it been made while testifying in the action and would not itself be hearsay evidence, and

(b) the declarant is

(i) unavailable as a witness, or

(ii) a witness or will be a witness, subject to cross-examination concerning the hearsay statement, or

(iii) available as a witness and the party offering the evidence has given reasonable notice to the Court and to every other party of the intention to offer the hearsay statement at the trial and that notice gave sufficient particulars (including the contents of the statement to whom it was made

and if known when and where) to afford a reasonable opportunity to estimate the value of the statement in the action

88. The Respondent's failure to call the Regional Directors, who were the declarants, remains unexplained. There is no evidence that they were unavailable; that they were, or would be, witnesses subject to cross-examination on the statements attributed to them; or that the notice contemplated by section 118 had been given. The evidence of PW6 and PW7, so far as it concerned the alleged non-performance of the sensitization, monitoring and training programmes ('the Projects') by the Appellant and the 2nd Accused, therefore rested on matters outside their personal knowledge and was adduced as proof of the truth asserted. It was, accordingly, inadmissible hearsay.

89. Aside the Regional Directors, the other MASLOC officials who allegedly gave statements to PW6 and PW7 that they had cashed cheques on behalf of the Appellant for the Projects did not testify, save for PW4. It was his testimony that he had given the Appellant GHS50,000.00 but this was denied by the Appellant in her caution statement to EOCO in Exhibit AM. Even PW4 who was the Appellant's official driver could not say that the Projects had not taken place. The remaining officials did not even assert that the programme was absent:

Q: The officers who wrote statements indicating that they were sent to cash cheques and handed over the monies to A1 did not indicate that there wasno sensitization, is that right?

A. That is correct my lady.

90. For these reasons, I hold that the Respondent failed to establish beyond reasonable doubt that the Appellant and the 2nd Accused did not apply the funds to the Projects. In requiring the Appellant to demonstrate that the project did occur, the learned trial judge again impermissibly shifted the evidential burden contrary to law and as affirmed in **the Ato Forson case**.

91. In a similar pattern, the Prosecution alleged that the Appellant had withdrawn funds amounting to GHS579,800.00 out of GHS1,465,035.00 intended for victims of a fire disaster at Kantamanto in 2015. The disbursement of the funds to the victims was to be done through Dwadifo Adamfo Savings and Loans Company Limited (Dwadifo Adamfo). However, the EOCO investigations revealed that the Appellant appropriated GHS579,800.00 out of the GHS1,465,035.00. The Appellant in her statement to EOCO maintained that the GHS579,800.00 was given to victims. The Prosecution had to prove first that the Appellant withdrew GHS579,800.00 and second that she did not distribute it to the victims as directed by the President.

92. The learned trial judge in her judgment, however, shifted the burden of proof to the Appellant, notwithstanding the Prosecution's failure to lay any cogent evidential foundation showing the alleged beneficiaries and the manner of disbursement as decided by MASLOC and Dwadifo Adamfo. The entire analysis by trial judge on this count is stated on page 343 of Vol 2 of the ROA as follows:

> '***As discussed in previous paragraphs, A1 has not made herself available to raise reasonable doubt****. Unfortunately, there was no real attempt in the cross-examination and AI's statements to offer any exculpatory evidence, other than the bare assertion that the funds were*

applied for the purpose for which they were intended. ***There is however no evidence showing for instance, cheques issued to these victims or some voucher they may have signed, or even any person coming forward to attest to it that he or she may have received any funds.*** *The same lack of evidence that came with the respect to the phantom sensitization programmes are present here too.'* (Emphasis suggested)

93. Before any adverse inference could properly be drawn against the Appellant, it was incumbent upon the Prosecution to establish, by cogent evidence, the accepted mode by which the funds were in fact distributed to the beneficiary victims by Dwadifo Adamfo and MASLOC. That evidential foundation could have been laid either by testimony from the intended beneficiaries as to the manner in which they received their monies, or by evidence from officials of Dwadifo Adamfo and MASLOC responsible for, or conversant with, the process of distribution. In the absence of such proof, the learned trial judge impermissibly shifted the burden onto the Appellant, requiring her to explain the manner in which she distributed the sums withdrawn from Dwadifo Adamfo, when no legal or evidential burden so to do had first arisen.

94. Interestingly, upon a perusal of the record, I find that the Prosecution led evidence to corroborate the Appellant's assertion that she distributed the money to the victims. PW1 testified under cross-examination on 24th May 2021 as follows:

Q: You testified some days ago that the issues in respect of Dwadifo Adamfo are no more relevant, was that your testimony?

A: Yes, my lady

Q: And I also recall, your testimony was that it was not relevant because you got to know that it was used for the purpose for which it was withdrawn?

A: Yes my lady.

Q: How did you get to know that it used for the purpose for which it was withdrawn?

A: It was through enquiry.

Q: Enquiry by who and to whom?

A: Enquiry by Baffuor Awuah & Associates, that led us to that conclusion.

Q: Whom did you enquire from?

A: We enquired from both within and without. Within means after speaking to some officials of MASLOC and then some officials of Dwadifo but I cannot pinpoint which one of them. We came to the conclusion that the matter had been resolved. If it had not been resolved, we would have put forward additional documentation.

Q: Is this testimony of yours captured in the report you tendered?

A: No, it is not captured in the report*.*

95. The admission by PW1 strikes at the very foundation of this charge of stealing against the Appellant. PW1 knew that the Appellant had distributed the funds to the victims; PW6 confirmed as much to him, yet that material fact found no place in the report tendered in evidence. If the funds were applied to their intended purpose, the allegation of dishonest appropriation cannot sensibly be sustained. It follows, inexorably, that the Prosecution failed to prove beyond reasonable doubt the indispensable element of dishonest appropriation. Accordingly, the conviction and sentencing based on this charge is hereby set aside.

96. Based on the analysis of the facts and applicable law regarding the offenses of conspiracy to steal and stealing, the convictions and sentences for all counts of conspiracy to steal and stealing against the Appellant must be set aside. I hereby order this to be done.

MONEY LAUNDERING

97. The Appellant was charged under section l(l)(c) of the Anti-Money Laundering Act, 2008 (Act 749). The relevant provision states:

Section 1 - Money laundering

1. (1) A person commits an offence of money laundering if the person knows or ought to have known ***that property*** *is or* ***forms part of the proceeds of unlawful activity and the person***

(a) converts, conceals, disguises or transfers the property,

(b) conceals or disguises the unlawful origin of the property, or

(c) acquires, uses or takes possession of the property.

(2) For the purpose of this Act, ***unlawful activity means conduct which constitutes a serious offence****, financing of a terrorist act or contravention of a law which occurs after the commencement of this Act whether the conduct occurs in this country or elsewhere.*

98. The essential elements of money laundering under section 1 of Act 749, are these: the accused must know, or from the circumstances ought to know, that the property in question is, or forms part of, the proceeds of unlawful activity; and must thereafter convert, conceal, disguise, transfer, acquire, use, or take possession of that property. It should be observed that Act 749 has since been repealed and replaced by the Anti-Money Laundering Act, 2020 (Act 1044).

99. Accordingly, a conviction for money laundering requires proof that the accused knew, or ought reasonably to have known, that the property constituting the subject-matter of the charge was derived from unlawful activity, and that he or she dealt with it by conversion, concealment, disguise, transfer, acquisition, use, or possession.

100. At the heart of the offence lies the unlawful provenance of the property. The predicate criminality may include, among others, terrorism, robbery, fraud, stealing, trafficking in narcotic drugs, murder, slave dealing, slave trading, piracy, trafficking, genocide and hijacking. It remains for the prosecution to prove, beyond reasonable doubt, that the Appellant knew, or ought to have known, that the property was the proceeds of unlawful activity. That knowledge, actual or constructive, is not incidental; it is an essential ingredient of the offence, see ***Dennis Adjei Contemporary Criminal Law in Ghana, page 402*.**

101. In this appeal, the predicate offenses in which the Appellant stands accused is conspiracy to steal and stealing which was correctly accepted by the trial judge. It follows from the findings and holding on the charges relating to conspiracy to steal and stealing in this Judgment that the money laundering conviction and sentencing cannot stand. Once the Respondent failed to prove the essential elements of conspiracy to steal and stealing as already discussed, the foundation for the charge of money laundering necessarily fell away. I therefore set aside all the convictions and sentences for money laundering.

IMPROPER PAYMENT OF PUBLIC FUNDS

102. The Appellant was charged under section 96(1)(c) of the Public Financial Management Act, 2016 (Act 921). The provision is in the following terms:

Offences and penalties

96.(1) ***A person, acting in an office or employment connected with*** *the procurement or control of Government stores, or the collection, management or* ***disbursement of amounts in respect of a public fund*** *or a public trust who*

(c) ***is responsible for any improper payment of public funds or payment of money that is not duly verified in line with existing procedures****, commits an offence and is liable on summary conviction to a term of imprisonment of not less than six months and not more than five years or to a fine of not less than one hundred penalty units and not more than two thousand, five hundred penalty units or to both.*

103. The Prosecution's case was that the Appellant, then Chief Executive Officer of MASLOC, caused to be paid to herself the sum of GH¢164,038.28, said to represent unused leave commuted into cash and ex-gratia. It was further alleged that she authorised payment of GH¢109,705.38 by way of ex-gratia to her deputy, Mustapha Abubakar Balima. The gravamen of the charge was that both payments were made without verification in accordance with existing procedures.

104. It therefore lay upon the prosecution to prove, beyond reasonable doubt, that the two payments were contrary to an identifiable and applicable verification procedure. That required proof of both the procedure said to govern those payments and of the precise respect in which the Appellant breached it. The evidence of PW5, the Head of Finance at MASLOC, was inconsistent with that essential premise:

Q: You tendered Exhibits AD, AC, and AB which relate to the payment of end of leave and ex-gratia to A1 and her former deputy is that correct?

A; That is correct.

Q: The payments were processed by your office, is that correct?

A: very correct.

Q: The processing was based on documents relating to the appointment of A1 and her former deputy, is that correct?

A: Very correct

Q: In processing for these payments, did you notice anything untoward?

A: No I did not notice anything untoward.

Q: You put your signature under these payments because you did not find anything wrong with these payments, is that correct?

A: I authorized those payments because I did not find anything wrong with the documents.

105. That evidence does not establish that the Appellant authorised the impugned payments. On the contrary, PW5 accepted that the payments were processed by his office, that they were founded upon the appointment documents of the Appellant and her former deputy as issued to them by the Chief of Staff at the

Office of the President, that he observed nothing untoward in the process, and that he authorised the payments because he found nothing wrong with the supporting documents. In those circumstances, it is difficult to discern the juridical basis upon which criminal liability could properly be fastened upon the Appellant.

106. There was no evidence that she authorised an improper payment, still less that she procured it by deception, misrepresentation, or the presentation of false documentation to the Head of Finance. The prosecution accordingly failed to prove, beyond reasonable doubt, that the Appellant was responsible for any unauthorised payment contrary to a duly verified procedure. The conviction and sentence on these counts cannot stand and are set aside.

UNAUTHORISED COMMITMENT RESULTING IN FINANCIAL OBLIGATION FOR THE GOVERNMENT

107. On Count 74, the Appellant was charged with unauthorised commitment resulting in financial obligation for the Government, contrary to section 96(1)(a) of the Public Financial Management Act, 2016 (Act 921). The statutory provision states:

Offences and penalties

96. (1) A person, acting in an office or employment connected with the procurement or control of Government stores, or the collection, management or disbursement of amounts in respect of a public fund or a public trust who

(a) makes an unauthorised commitment resulting in a financial obligation for the Government, that is not duly verified in line with existing procedures, commits an offence and is liable on summary

conviction to a term of imprisonment of not less than six months and not more than five years or to a fine of not less than one hundred penalty units and not more than two thousand, five hundred penalty units or to both.

108. The Prosecution alleged that the Appellant made payments and commitments, including an agreement with Mac Autos, without due process or authority. It contended that she lacked authorisation to commit the Government of Ghana to financial obligations amounting to GH¢61,735,832.50.

109. The learned trial judge held that, because the Prosecution had averred a negative, namely absence of authority, the burden shifted to the Appellant to prove that she possessed authority to make those commitments on behalf of the Government of Ghana. At pages 358 to 359 of Volume 2 of the Record of Appeal, the learned judge stated:

'*It is alleged that these payments and commitments, including the agreement with Mac Autos were done without due process and authorization.* ***It has been already discussed, in this Judgment, the burden of proof where a negative, such as a lack of authority to undertake an event or action, is alleged as against a positive.'***

She continued on page 359:

'In such circumstances, it was for A1 to adduce evidence to show that she had authority to make the commitments *that resulted in substantial obligations to the Government to the tune of GHS61,735,832.50…. Unfortunately, not to sound repetitive, A1 was absent and did not offer any proof of authorisation for the commitments she made despite the opportunity to* *do so.. I therefore hold that the prosecution has been able to lead sufficient evidence for A1 to stand convicted'*

110. It is unnecessary to rehearse at length the elementary principle that, in criminal proceedings, an accused person bears no duty to assist the prosecution in proving its case unless the enabling statute which defines the crime expressly allocates the burden to prove authorisation on the Accused person. Take for instance section 206 of the Criminal and Other Offenses Act, 1960 (Act 29) which illustrates this legal proposition by way of its enactment that *'A person who, without lawful authority, **the proof of which lies on that person**, has in a public place an offensive weapon commits a misdemeanour.'* Similarly, section 41(1) of the Narcotics Control Commission Act, 2020 (Act 1019) states: *'A person who, without lawful authority, **proof of which lies on that person**, has possession or control of a narcotic plant for use or for trafficking commits an offence.* (Emphasis suggested)

111. The burden remained throughout upon the Prosecution to prove that the Appellant lacked authority to commit the State to the relevant financial obligations in this appeal. It was not for the Appellant to prove the converse. Unless Act 921 expressly imposed upon the Appellant a legal burden to establish authorisation, no such burden arose. Nor did the Prosecution identify the applicable verification procedure, whether emanating from the Ministry of Finance, the Public Procurement Authority, or any other competent source or the particular manner in which the Appellant was said to have breached it.

112. It is not disputed that on 6th December 2016, the Appellant executed a contract with Mac Autos for the supply of 350 vehicles to GPRTU. When she sought clearance from the Public Procurement Authority to procure those vehicles by the single-source method, the Authority required proof of the relevant financial arrangements from the Ministry of Finance. The evidence shows that the Ministry of Finance confirmed those financing arrangements both to the Public Procurement Authority and to the Appellant. In those circumstances, the Prosecution did not demonstrate which verification procedure, within the meaning of section 96(1)(a) of Act 921, was breached. That omission was fatal. I am therefore satisfied that the essential ingredients of the offence under section 96(1)(a) of Act 921 were not proved. The conviction and sentence founded upon Count 74 are accordingly set aside.

CONTRAVENTION OF THE PUBLIC PROCUREMENT ACT

113. The Appellant was further charged with two counts of contravening the Public Procurement Act, 2003 (Act 663), under sections 14(1), 40(1)(a) and 92(1). The prosecution's case was that she procured the supply of 350 vehicles from Mac Autos & Spare Parts Ghana Ltd using public funds in breach of Act 663.

Section 14(1) provides:

(1) This Act applies to

> ***(a)*** ***the procurement of goods, works and services, financed in whole or in part from public funds except where the Minister decides that it is in the national interest to use a different procedure***

Section 40(1) (a) of Act 663 provides:

(1) A procurement entity may engage in single-source procurement under section 41 with the approval of the Board,

(a) *where goods, works or services are only available from a particular supplier or contractor, or if a particular supplier or contractor has exclusive rights in respect of the goods, works or services, and a reasonable alternative or substitute does not exist;*

Section 92(1)

(1) A person who contravenes a provision of this Act commits an offence and where a penalty is not provided for the offence, that person is liable on summary conviction to a fine not exceeding one thousand penalty units or a term of imprisonment not exceeding five years or to both the fine and the imprisonment.

For present purposes, it is material to note that section 98 of Act 663 defines "Minister" as "*the Minister responsible for* Finance".

114. The Prosecution contended that the Appellant failed to comply with the proper procurement procedure because the statutory conditions for single-source procurement were not satisfied. To its credit, the Prosecution in this instance identified the procedure it said the Appellant ought to have followed, unlike in respect of certain other offences where no such procedure was established. In substance, however, the allegation was that the Appellant procured the vehicles without the approval of the Board of the Public Procurement Authority, contrary to section 40(1)(a) of Act 663.

115. The learned trial judge again erred in placing upon the Appellant the burden of showing that she was authorised to proceed by single-source procurement. At page 368 of Volume 2 of the Record of Appeal, the learned judge stated:

'As stated copiously in this Judgment, the fact of the negative averment in the charges would place the burden on A1 (sic) demonstrate to the Court to the standard of raising reasonable doubt that she approved single-source procurement in accordance with the Public Procurement Act…. In such circumstances, without any further unnecessary detail in view of the discussions already copiously discussed in this Judgment, and A1 having failed or refused to participate in this trial to its conclusion and having offered no explanation to merit her actions, I hold that the prosecution has been able to prove Counts 79 and 80 of the charge sheet against A1'

116. In my judgment, the evidence adduced at trial did not prove that approval of the Board of the Public Procurement Authority had been withheld. Rather, the evidence showed that the then Minister for Finance confirmed to the Public Procurement Authority the relevant financial arrangements for the contract, as the Authority itself had required.

117. PW1's evidence further confirmed that the Appellant did not authorize payment for the 350 vehicles during her tenure as Chief Executive Officer of MASLOC. It was PW1 who, after assuming office and renegotiating the unit price in 2017, authorised payments to Mac Autos; those payments continued into 2018, by which time the Appellant no longer held office. If, as the Prosecution suggested, the contract lacked the necessary approval or ministerial authorisation, it is difficult to see how PW1 could lawfully have proceeded to perform it and authorise payments under it. The Prosecution therefore failed to prove, beyond reasonable doubt, that the Appellant contravened Act 663 as charged. The convictions and sentences on both counts are accordingly set aside.

HARSH AND EXCESSIVE SENTENCING

118. Having concluded that the convictions on all counts must be quashed, it is necessary to say no more than this upon the final complaint by the Appellant that the sentence was harsh and excessive. A sentence is not an autonomous judicial order. It is the penal consequence of a valid conviction. Where the conviction is set aside, the sentence is deprived of its legal bedrock. The appellate question whether a sentence is excessive is intelligible only by reference to an offence lawfully proved and to the circumstances in which that offence was committed. Once the finding of guilt has disappeared, there is no juridical foundation upon which any assessment of proportionality can properly proceed.

119. It would therefore be both unnecessary and conceptually unsound for this Court to consider whether the punishment fitted a crime which, on this appeal, has not been established in law. Such an exercise would risk elevating a residual legitimacy to a sentence whose indispensable foundation has ceased to exist. The Appellant is not entitled merely to a reduction in sentence; she is entitled to the more complete relief which follows from the quashing of the convictions themselves. In those circumstances, the ground of appeal directed to sentence is rendered moot. I would decline to express any view upon it.

V. CONCLUSION:

120. It has long been the golden thread running through our criminal jurisprudence that the prosecution must prove the guilt of the accused, and that this burden never shifts unless the enabling statute or law has expressly and clearly said otherwise. That principle, articulated by **Viscount Sankey in Woolmington v DPP [1935] AC 462** and unshaken since, is not a technical nicety of procedure. It is the constitutional expression of the presumption of innocence, and it is owed to every accused.

121. The learned trial judge lost sight of this. Confronted with a charge sheet drawn mostly in negative terms that the Appellant had acted ‘without authorisation,’ or ‘without due process,’ she reasoned that because the Prosecution had averred a negative, it fell to the Appellant to prove the positive: that authorisation, process, or justification in fact existed. With respect, that reasoning inverts the very principle it purports to apply.

122. The manner in which a Prosecutor chooses to draft a particular offence cannot, of itself, relocate the burden of proving an ingredient of the crime. A negative averment, artfully or carelessly pleaded, is not an exception, a proviso, or a statutory defence; it remains, in substance, an element the Prosecution must establish and the difficulty of proving a negative is the Prosecution’s difficulty to bear, not the Accused to solve.

123. I would go further to emphasize the principle that unless a statute plainly places the burden of proving a particular element of an offence upon the Accused, she is under no obligation whatsoever to lead evidence in aid of a Prosecution case that has not yet reached the threshold the law demands of it. To require otherwise is to ask the Accused to complete the Prosecution’s unfinished work and to convict her for declining the invitation as was done by the learned trial judge.

124. The Prosecution's evidence, on a fair and unaided reading, fell short of proof beyond reasonable doubt. The shortfall was not made good by any burden properly resting on the Appellant and the trial judge's misdirection on this fundamental point goes to the very root of a fair trial. For these reasons, therefore, I am satisfied that the conviction and sentencing on all the charges including those manifestly defective charges cannot stand. I would allow the appeal and set aside the Appellant's conviction and sentencing on all counts.

[SGD.]
EMMANUEL ANKAMAH J.A.
(JUSTICE OF THE COURT OF APPEAL)

[SGD.]
I agree SAMUEL OBENG-DIAWUO J.A.
(JUSTICE OF THE COURT OF APPEAL)

[SGD.]
I also agree EMMANUEL SENYO AMEDAHE J.A.
(JUSTICE OF THE COURT OF APPEAL)

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