IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE, HELD IN ACCRA ON WEDNESDAY, THE 24TH DAY OF JANUARY, 2024:

CORAM: JUSTICE AFIA SERWAH ASARE-BOTWE (MRS), J.A.
PRESIDING
JUSTICE HAFISATA AMALEBOBA J.A. (MRS.)
JUSTICE STEPHEN OPPONG J.A.
(SITTING AS ADDITIONAL JUSTICES OF THE HIGH COURT)

SUIT NO. CR/0401/2021

THE REPUBLIC

VRS.

1.	**DR. FREDERICK MAC-PALM (DECEASED)**	
2.	**DONYA KAFUI @ EZOR**	
3.	**BRIGHT ALAN DEBRAH OFOSU @ BRIGHT ALAN YEBOAH @ BB**	
4.	**JOHANNES ZIKPI**	**ACCUSED PERSONS**
5.	**COL. SAMUEL KODZO GAMELI**	
6.	**WO 11 ESTHER SAAN DEKUWINE**	
7.	**CPL SEIDU ABUBAKAR**	
8.	**LAC ALI SOLOMON**	
9.	**CPL SYLVESTER AKANPEWON**	

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10. ACP BENJAMIN KWASI AGORDZO

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A1 DECEASED

OTHER ACCUSED PERSONS PRESENT

COUNSEL: **HON. GODFRED YEBOAH DAME (AG) FOR THE REPUBLIC PRESENT WITH MR. ALFRED TUAH YEBOAH (DAG), MRS. YVONNE ATAKORA OBUOBISA (DPP), MS WINIFRED SARPONG (PSA), MS. HILDA CRAIG (PSA), MRS LAWRENCIA ADIKA (SA) AND MS. AKOSUA AGYAPOMAA AGYEMANG (ASA)**

MR. VICTOR KWADJOGAH ADAWUDU FOR A2, A7, A8 AND A9 PRESENT WITH MS. CHRISTINE AFI FIAKPOE, MR. DOMINIC SREM-SAI AND MR. KWABENA KYEI POAKWA

MS. RITA KUNKUTI ALI FOR A3 PRESENT

MR. ANTHONY LARTEY FOR A4 PRESENT BEING LED BY MR. AMEYAW NYAMEKYE WITH MR. SAMUEL ATUAH, ABIGAIL SERWAA BEMPAH AND BAFFUOR ABABIO AHENKORAH

MR. ERIC SENYO PONGO FOR A5 PRESENT

MR. LAMTIIG APANGA FOR A6 PRESENT WITH MR. EDWARD BUGRE, MR. MATHIAS YIR-ERU AND MS. ANGEL CHRISTINA AHINFUL

MR. KORMIVI DZOTSI PRESENT WITH MR. BIAH MARECELLINUS, MS. PRISCILLA ENYONAM ABOTSI AND MR. PRINCE KAKA HOLDING THE BRIEF OF MR. MARTIN KPEBU FOR A10

MR. MARTIN KPEBU IS NOW PRESENT AT 12:35P.M.

JUDGMENT

The Accused Persons were arraigned before this Court on Saturday, the 24th of April, 2021 per a Warrant issued by His Lordship the Chief Justice on the 23rd of April, 2021 empaneling the above-named Justices.

The charges contained in the charge sheet filed on the 23rd of April, 2021 are;

a) On Count one against A1, A2, A3, A4, A6, A7, A8 and A9; Conspiracy to Commit Crime, namely High Treason contrary to sections 23(1) of the Criminal Offences Act, 1960 (Act 29) and Article 3(3a) of the 1992 Constitution and s.180 of the Criminal Offences Act, 1960 (Act 29).

b) On Count two against A1, A2, A3, A4, A6, A7, A8 and A9; namely High Treason contrary to Article 3(3a) of the 1992 Constitution and s.180 (1) of the Criminal Offences Act, 1960 (Act 29).

c) On Count three, A5, Col. Samuel Kodzo Gameli is charged with Abetment of crime, namely, High Treason contrary to Article 3(3) (b) of the 1992 Constitution and Section 180 of the Criminal Offences Act, 1960 (Act 29).

d) And under Count Four, the 10th Accused, ACP Benjamin Kwasi Agordzo, is charged with Abetment of crime, namely, High Treason contrary to Article 3(3)(b) of the 1992 Constitution and Section s.180 of the Criminal Offences Act, 1960 (Act 29).

Subsequently, another warrant dated **21st December, 2022** was issued authorizing the Judges in this matter to sit as Additional High Court Judges and to continue the trial to its logical conclusion in accordance with law.

BRIEF FACTS OF THE CASE

The facts of the case, attached to the Charge Sheet and read to the Court at the commencement of the trial are that, the 1st accused is a Medical Doctor and the director of Citadel Hospital located at Alajo, Accra. The 2nd accused is a blacksmith. The 3rd accused is a fleet manager in Accra. The 4th accused is a civilian employee of the Ghana Armed Forces. The 5th accused is a senior military officer of the Ghana Armed Forces, the 6th, 7th, 8th and 9th accused persons are soldiers of the Ghana Armed Forces whilst the 10th accused is a senior Police Officer.

Sometime in June 2018, the security agencies picked up information regarding activities of some group of persons planning to overthrow the constitutionally elected government of the Republic of Ghana. Further intelligence revealed that the 3rd accused was holding meetings with the 6th, 7th, 8th and 9th accused persons in furtherance of the plot to overthrow the government.

Acting on the intelligence gathered, surveillance was mounted on the activities of the accused persons which revealed that the accused persons held several meetings to plot the overthrow of the government. At these meetings, several issues were discussed, some of which included the recruitment of more soldiers, the acquisition of weapons and bullet proof gear, development of sketch maps of key installations and facilities of the state to be attacked during the takeover. They also discussed the procurement of electronic jamming devices and vehicles that would enable them take over the National Communications Authority (NCA) and jam all radio stations except for the Ghana Broad Corporation (GBC) where they intended to broadcast their successful overthrow of the government from.

Further discussions by the 1st, 2nd, 3rd accused persons and a witness in this case bordered on how to capture the President of the Republic, and some key individuals. They also planned to force the President to announce his overthrow once he was captured. Again, there were discussions on whether or not to kill the President in the process of overthrowing the government.

To facilitate their communication in the grand scheme of overthrowing the government, the 3rd accused supplied some members of the group including the 6th, 7th, 8th and 9th accused persons with mobile phones. The 4th accused being a staff of the signal unit of the armed forces and with the knowledge of various communication gadgets was recruited by 5th accused to support and aid the 1st accused to procure communication and the jamming equipment for the plot to overthrow the constitutionally elected government of Ghana. The 5th accused who was regularly meeting with the 1st and 4th accused at the Citadel Hospital in one such meeting

advised the 1st accused person to be careful about where they met the soldiers in order to avoid being found out.

In furtherance of the plot to overthrow the government, the 1st accused contacted and contracted the 2nd accused from Alavanyo to manufacture explosives and pistols. The 2nd accused brought to Accra his tools, machines and other materials required for the manufacturing of the weapons. The 1st accused then converted the x-ray laboratory of the Citadel Hospital into a manufacturing shop where the 2nd accused mounted his tools and machines to manufacture the weapons. Not satisfied with the number of weapons manufactured by the 2nd accused, 1st accused procured the services of a weapon mechanic at the Base Workshop of the Armed Forces to procure AK47 assault rifles to augment his armoury. However, the weapons mechanic, who was not convinced by the reasons for the procurement of the AK47 assault rifle, returned the money to the accused.

Investigations revealed that the 1st and 3rd accused persons were members of a Non-Government Organization (NGO) called Take Action Ghana (TAG). Investigations into the activities of TAG revealed that it was incorporated in August 2018. It was further revealed that TAG's unofficial mission statement was stated as being "an un-traditional civil revolutionary movement intending to galvanize and mobilize the masses in an unprecedented civil uprising that will force for a constitution, to shut the current government including parliament and the executive branch at the Flagstaff House".

To advance this mission, the 3rd accused with the consent of the 1st accused created a WhatsApp platform to recruit members for the group. The 10th accused was invited by the 1st accused to join the group which he did. Investigations into the WhatsApp chats between the 1st and 10th accused persons revealed discussions on embarking on planned demonstrations in the form and likeness of the 'Arab-spring' aimed at bringing down the government. To facilitate the demonstrations, the 10th accused gave an amount of GH¢2,000 to the 1st accused to support the cause and also drafted a speech for the 1st accused, to be read during the demonstration.

On 19th September, 2019 at about 23:00 hours, the 1st and 2nd accused persons together with a witness in this case went to the military shooting range general area at Teshie to test fire the locally manufactured pistols. A military patrol team on duty arrested the accused persons and the witness with the locally manufactured weapons and took them to the Southern Command Headquarters for questioning.

The 1st and 2nd accused persons sensing danger, returned to the Citadel Hospital, where they manufactured the weapons, and tried to conceal the weapons and improvised explosive devices (IEDs). However, on the morning of the 20th September, 2019, the military and other security agencies stormed the premises of the hospital and arrested the 1st and 2nd accused persons and also retrieved the hidden weapons from a generator set and the IEDs, from some car tyres on the premises. A thorough search of the premises of the hospital and the houses of the accused persons by security operatives revealed the sketch maps, tools used in manufacturing of the weapons and the IEDs, locally-manufactured pistols, several rounds

of ammunitions, 3 hand smoke grenades among others. The 1st and 2nd accused persons were arrested. Subsequently, the other accused persons were also arrested by the military and police authorities and handed over to the Bureau of National Investigations (now the National Investigations Bureau (NIB)).

The hearing commenced on the 8th of June, 2021. The case progressed steadily with the Prosecution having called thirteen (13) witnesses. The Prosecution announced on the 4th of July 2022 that they had come to the end of their case.

The prosecution called the following witnesses;

- **PW1: Col. Isaac Amponsah** (Director, Operational Intelligence at the Defence Intelligence (DI) Unit of the Ghana Armed Forces;

- **PW2: Major-General Nicholas Peter Andoh** (Currently the Chief of Staff at the General Headquarters of the Ghana Armed Forces and at the material time of the alleged occurrences in this case the Director-General of Defence Intelligence of the Ghana Armed Forces;

- **PW3: Staff Sgt. Awarf Kwadwo Sule** (A soldier who says he participated in meetings and other events in this matter);

- **PW4: Sgt. Henry Kow Ghartey** (A soldier stationed at the One Signal Regiment, the Communication Unit of the Ghana Armed Forces at Burma Camp);

- **PW5: Staff Sgt. Jonas Yeankye Kofi Nantonah** (A soldier stationed at the Training Unit of the General Headquarters of the Ghana Armed Forces);

- **PW6: Isaac Osei** of the Ghana Institute of Languages who testified as having been in charge of the team which transcribed the audios and videos tendered in evidence;

- **PW7, ASP Richard Anaty, a firearms examiner** of the Forensic Science Laboratory of the CID Headquarters;

- **PW8: Col. Gaspard Kwaning Asare** who testified that at the material time, he was Senior Ammunition Technical Officer for the Ghana Armed Forces;

- **PW9: Eric Karikari Boateng**, a Pharmacist and the Director, Centre for Laboratory Services and Research with the Food and Drugs Authority (FDA);

- **PW10: Francis Aboagye,** an Officer with the National Intelligence Bureau (NIB) (formerly the Bureau of National Investigations (BNI) who testified that he was part of the team that investigated this case;

- **PW11: Cabral Mohammed Ayambillah**, a Cyber Security and Digital Forensic Officer with the NIB who testified that he examined the digital devices (mobile phones) that were seized from relevant accused persons in this matter.

- **PW12: Cpl. Godwin Nii Korankye Ankrah** also a soldier who testified that he also participated in a meeting with some of the accused persons;

- **PW13: D/C/Inspector Michael Nkrumah**, also an Officer with the National Intelligence Bureau (NIB) (formerly the Bureau of National Investigations (BNI) who testified that he was also part of the team that investigated this case.

Upon being called upon to answer to the charges levelled against them, and upon due disclosures, case management and some hiccups regarding the change of representation of A3 among others, A1, now deceased commenced his testimony on the 21st of February, 2023. While still under cross-examination, the Court was notified on the 29th of March, 2023 that A1 had passed away on the 25th of March, 2023 while on bail. The Court therefore ordered, in accordance with **section 62 of the Evidence Act, 1975 (N.R.C.D. 323)** that his testimony not having been completed, same be expunged and his lawyer was accordingly discharged for the trial of the other accused persons to continue to its logical conclusion.

The said section 62 of N.R.C.D. 323 states in part;

(1) At the trial of an action, a witness can testify only if the witness is subject to the examination of the parties to the action, if they choose to attend and examine.

(2) Where a witness who has testified is not available to be examined by the parties to the action who choose to attend and examine, and the

unavailability of the witness has not been by a party who seeks to cross-examine the witness, the Court may exclude the entire testimony or part of the testimony as fairness required.

In our view, considering the seriousness of the allegations before the Court, in order not to occasion a miscarriage of justice against the surviving accused persons, the incomplete evidence of A1 was best excluded. None of the accused persons or the Prosecution raised any objection to the exclusion of the testimony of the late first accused person.

All the nine (9) accused persons currently before the Court testified in their defence. Additionally, A10 called a witness (DW1 for A10) Journalist and Lawyer, Samson Lardi Ayenini.

In this case, therefore, this Court has to consider the evidence of an aggregate of twenty-three (23) odd witnesses for the prosecution and the defence in order to come to a conclusion of whether or not the prosecution has satisfactorily proven the charges against each of the accused persons to the required standard.

THE LAW AND THE EVIDENCE REQUIRED

The required standard of proof is codified under the Evidence Act (NRCD 323) in at least three sections; Sections 11(2), 13(1) and 22 which are reproduced below;

"11(2) In a criminal action the burden of producing evidence, when it is on the prosecution as to any fact which is essential to guilt,

requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of the fact beyond reasonable doubt."

"13(1) (1) In any civil or criminal action the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond reasonable doubt."

"22. In a criminal action a presumption operates against the accused as to a fact which is essential to guilt only if the existence of the basic facts that give rise to the presumption are found or otherwise established beyond reasonable doubt, and thereupon, in the case of a rebuttable presumption, the accused need only raise a reasonable doubt as to the existence of the presumed fact."

In the book **Essentials of the Ghana Law of Evidence**, S.A Brobbey deals extensively with the standard of proof required in criminal trials from pages 48 to 55. He states inter alia at pages 50 and 51;

"Proof beyond reasonable doubt does not mean that there should be no doubt whatsoever in the case presented by the prosecution. It means that by the end of the trial, the prosecution must prove every element of the offence or the charge (but not all the facts) and show that the defence is not reasonable……

The consideration for the principle of proof beyond reasonable doubt can be illustrated this way: If there is any element of the charge which is essential for the accused to be convicted, that element

should be established to the satisfaction of the trier of facts in such a manner that a reasonable mind could conclude that the accused is guilty of the offence or that the existence of the facts constituting the charge is more probable than its non- existence."

What does proof beyond reasonable doubt really entail?

In the case of **OSEI V. THE REPUBLIC [2009]24 MLRG 203, C.A**; it was held, confirming the long- held view that ***"proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. The Court would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong as to leave only a remote possibility in his favour which can be dismissed with the sentence, 'of course it is possible, but not at all probable', the case is proved beyond reasonable doubt, but nothing short of that will suffice."***

In assessing the evidence, the Court would have to apply what is known as the three-tier test to each of the elements of a crime.

In the case of **THE REPUBLIC v. FRANCIS IKE UYANWUNE [2013] 58 GMJ 162, C.A,** it was held per Dennis Adjei J.A that;

"The law is that the prosecution must prove all the ingredients of the offence charged in accordance with the standard burden of proof; that is to say the prosecution must establish a prima facie case and the burden of proof would be shifted to the accused person to open his defence and in so doing, he may run the risk of non-

production of evidence and/ or non-persuasion to the required degree of belief else he may be convicted of the offence. The accused must give evidence if a prima facie case is established else, he may be convicted and, if he opens his defence, the court is required to satisfy itself that the explanation of the accused is either acceptable or not. If it is acceptable, the accused should be acquitted, and if it is not acceptable, the court should probe further to see if it is reasonably probable. If it is reasonably probable, the accused should be acquitted, but if it is not, and the court is satisfied that in considering the entire evidence on record the accused is guilty of the offence, the court must convict him. This test is usually referred to as the three- tier test".

On the three-tier test and its other renditions on what is expected of the trial court in relation to the evaluation of the evidence, please see;

- **FAISAL MOHAMMED AKILU v THE REPUBLIC (SC) (Unreported) Criminal Appeal NO. J3/8/2013 dated 5th July, 2017**

(Available online at www.Ghalii.org)

- **R v ANSERE [1958] 3 WALR 385– CA;**
- **DARKO v THE REPUBLIC [1968] GLR 203- CA;**
- **KWESI v THE REPUBLIC [1977] 1 GLR 448- CA** and
- **LUTTERODT v C.O.P. [1963] GLR 429– SC.**

What are the elements that the prosecution had to prove and the evidential issues to be dealt with?

The elements required to be proved in each of the offences in general shall be set out and then, there will be an assessment of whether the prosecution has been able to prove the elements or ingredients. In doing so, we shall also assess the defence mounted by each of the accused persons relative to the case against that accused person.

In furtherance of this objective, the approach would be to discuss the elements of the offences as contained in the charge sheet and what the prosecution ought to have established and then assess the evidence on record in the light of the law against each accused person. What defence was offered by each of the accused persons will also be assessed and conclusions drawn on each accused person.

Similar offences as couched in the charge sheet shall be dealt with together. The offences shall be dealt with thus;

- Counts one and two on Conspiracy to commit crime, namely High Treason and High Treason together;

- Counts three and four on Abetment of crime; namely High Treason together.

ON COUNTS ONE AND TWO ON CONSPIRACY TO COMMIT CRIME, NAMELY HIGH TREASON AND HIGH TREASON:

Under Count one, A1, A2, A3, A4, A6, A7, A8 and A9 are charged with conspiracy to commit crime, namely High Treason.

Under Count Two, A1, A2, A3, A4, A6, A7, A8 and A9 are charged with High Treason.

ON WHAT WOULD CONSTITUTE "CONSPIRACY" UNDER OUR LAW:

We will discuss the law on the charges of conspiracy to commit crime (in this case, High Treason) and the substantive offence of High Treason together, since they overlap.

Section 23(1) of Act 29 states;

> *(1) Where two or more persons agree to act together with a common purpose for or in committing or abetting a criminal offence, whether with or without previous concert or deliberation, each of them commits a conspiracy to commit or abet the criminal offence.*

In the relatively recent decision, the case **FRANCIS YIRENKYI v. THE REPUBLIC (Criminal Appeal No. J3/7/2015 dated the 17th of February, 2016,** the Supreme Court, Dotse JSC presiding, concluded, regarding the position of the law on a conspiracy charge that, in making the decision leading to the success of the appeal, the effect of the Revised Edition Act, 1998 (Act 562) on the definition of Conspiracy came into focus.

Whereas the old formulation in Section 23(1) of Act 29 required two or more persons to **agree or act** together for a common purpose, the new formulation requires them to **agree to act** together for a common purpose.

The Supreme Court held in the **Francis Yirenkyi case,** that the new formulation in section 23(1) of Act 29 is the law on conspiracy in Ghana and, until that formulation has been changed by amendment or recourse to the Supreme Court, the changes brought about by the work of the Statute Law Revision Commissioner are valid and remain the laws of Ghana.

In effect, the definitions of conspiracy based on previous decisions have failed to be good law.

A case of conspiracy without proving that the persons involved agreed to act together to commit the offence shall fail. It is however not a defence for an accused person who is charged for conspiracy to state that he did not have prior or previous concert or deliberation with the other accused persons to commit the offence where there is **evidence** that they agreed to act together to commit the offence.

(See Dennis Dominic Adjei: Contemporary Criminal Law in Ghana at page 89).

Further, in the even more recent case of **FAISAL MOHAMMED AKILU v. THE REPUBLIC (SC) [2020] Crim. LR 286 (**the Supreme Court per Appau JSC, in a unanimous decision stated at page 290 of the report;

From the definition of conspiracy provided under section 23(1) of Act 29/60, a person can be charged with the offence even if he did not partake in the accomplishment of the said crime, where it is found that prior to the actual

committal of the crime, he agreed with another or others with a common purpose for or in committing or abetting that crime.....

However, where there is evidence that the person did in fact, take part in the crime, the particulars of the conspiracy charge would read; "he acted together with another or with others with a common purpose for or in committing or abetting a crime." This double-edged definition of conspiracy arises from the undeniable fact that it is almost always difficult if not impossible to prove previous concert in conspiracy cases. Conspiracy could therefore be inferred from the mere act of having taken part in the crime where the crime was actually committed. Where the conspiracy charge is hinged on an alleged acting together or in concert, the prosecution is tasked with the duty to prove or establish the role each of the alleged conspirators played in accomplishing the crime."

(Emphases ours)

Further, the case **of AMANIAMPONG (ISAAC) alias FIIFI v. THE REPUBLIC (CRIMINAL APPEAL NO: J3/10/2013, UNREPORTED; Judgment dated 28TH MAY 2014; CORAM: ADINYIRA (MRS) JSC (PRESIDING): OWUSU JSC (MS); DOTSE JSC; ANIN YEBOAH JSC; AND AKAMBA JSC** (Available on www.dennislawgh as [2014] DLSC3336) and also on www.ghalii.org) would be useful fodder for us in this case.

The appellant and others had been convicted of conspiracy to rob and robbery for snatching the bag of a young woman whom they had stalked and robbed. The facts suggested that the appellant was not at the scene of the crime. However, it was established that the contents of the bag of the

complainant including her ID cards were found on the appellant and his gang. The Court of Appeal affirmed the convictions, holding that accused persons had used force and caused harm to the complainant to overcome her resistance in taking her bag away, and therefore the offence of robbery had been proved.

On further appeal to the Supreme Court, the appellant contended that his conviction was wrong and the sentence was too harsh, as there was no direct evidence linking him to the commission of the offence.

On the conviction for conspiracy to rob, the Supreme Court, upholding the conviction, stated that an agreement to commit a crime is not always proved by direct evidence. It may be established by inferences from proven facts. It was held further, that once the evidence established the charge of conspiracy, it was irrelevant whether the accused committed the actual offence or not; for once there was robbery in furtherance of that conspiracy, he was as guilty as the person who actually committed the act of robbing the victim, for his responsibility as a conspirator is complete at the time of the agreement.

These recent decisions discussed immediately above will be the foundation of the assessment of the evidence before the court for a determination to be made as to whether the prosecution has satisfactorily led evidence against A1, A2, A3, A4, A6, A7, A8 and A9.

At the end of the day, without being technical or condescending, it would seem to us that this the Court, in assessing the charge of conspiracy should look more to substance than form. The court ought to be satisfied

that the evidence as is satisfies the burden of proof against each of the accused persons per the role each of them is alleged to have played in the scheme of things.

ON THE SUBSTANTIVE OFFENCE OF HIGH TREASON AND ITS ELEMENTS:

High Treason is defined under section 180 of the Criminal Offences Act, 1960 (Act 29) in the following terms;

(1) Whoever commits high treason shall be liable to suffer death.

(2) For the purposes of subsection (1), high treason shall have the meaning assigned to it by clause (3) of Article 3 of the Constitution.

Article 3(3) (a) of the 1992 Constitution to which section 180 of the Criminal Offences Act, 1960 (Act 29) refers also states;

(3) Any person who –

(a) by himself or in concert with others by any violent or other unlawful means, suspends or overthrows or abrogates this Constitution or any part of it, or attempts to do any such act; or

(b) aids and abets in any manner any person referred to in paragraph (a) of this clause;

commits the offence of high treason and shall, upon conviction, be sentenced to suffer death.

From the tenure of the legislation, what elements the Prosecution is expected to have proven beyond reasonable doubt are that;

a) A person- in this case A1, A2, A3, A4, A6, A7, A8 and A9;

b) Have by themselves or in concert with others,

c) By any violent or other unlawful means

d) Have suspended or overthrown or abrogated the Constitution or any part of it;

e) Or attempted to do any such act.

It is clear from the import of the legislation that not only would a substantive act of actually suspending or overthrowing or abrogating this Constitution or any part of it by violent or other unlawful means amount to High Treason, but what would ordinarily be the inchoate of attempting to do any such act would amount to the substantive offence.

The circumstances under which the Constitution or any part of it, could be suspended, overthrown or abrogated, would include violently removing the elected executive, legislature or any other arm of government or institution set up under the Constitution or making such an attempt as has been alleged in this case.

What an attempt is, is not defined under section 180 of Act 29, but resort would have to be had to section 18 of Act 29 which states;

(1) A person who attempts to commit a criminal offence shall not be acquitted on the ground that the criminal offence could not be committed according to the intent

(a) by reason of the imperfection or other condition of the means, or

(b)by reason of the circumstances under which they are used, or

(c) by reason of the circumstances affecting the person against whom, or the thing in respect of which the criminal offence is intended to be committed, or

(d)by reason of the absence of that person or thing.

Also, of benefit for the purpose of comprehending the provisions are the illustrations provided under subsection (1) of section 18 viz;

1.A buys poison and brings it into B's room, intending there to mix it with B's drink. A has not attempted to poison B. But if A begins to mix it with B's drink, though A afterwards desists and throws away the mixture, A commits a criminal offence of an attempt.

2.A points a gun, believing it to be loaded, and meaning immediately to discharge it at B. A has committed the criminal offence of an attempt, although the gun is not in fact loaded.

3.A puts A's hand into B's pocket, with the purpose of stealing. A has committed the criminal offence of an attempt, although there is nothing in the pocket.

4.A performs an operation on B with a view to causing abortion. A has committed the criminal offence of an attempt, although B is not in fact with child.

In Volume 1 of Prof. H.J.A.N Mensa-Bonsu's book **THE GENERAL PART OF CRIMINAL LAW- A GHANAIAN CASEBOOK,** on the basis of criminal accessorial liability, the learned author explains what would amount to an attempt at pages 459 to 460;

"An "attempt" in ordinary usage, suggests that an activity which was begun, but did not see completion. This is not entirely accurate in criminal law terms. In criminal law, the incompleteness of a scheme, is referrable to the object which the actor set out to achieve. Thus, an attempt may describe an act which was not completed before detection, or one which was completed, but which failed to achieve its objects. The failure to achieve the objects may also be attributable to various factors, such as planning with incorrect information, or adoption of inadequate means to achieve the purpose. The mens rea for the crime of attempt is the same as for the substantive offence which the person sought to commit

….The difference lies in the nature of the actus reus……

From the above definition, it is clear that an attempt under the Code is complete when the train of events culminating in the successful commission of the offence is at such a stage as to make it an unavoidable conclusion what the purpose was, in embarking upon the particular course of conduct ……For the purposes of this offence, it does not matter:

I(1) that the means used by the person could not have achieved the purposes he or she set out to achieve, e.g. a person gives a baby he wanted to kill a poisonous fruit, ignorant of the fact that it would not harm the baby unless the skin has been punctured in some way. Even though the fruit passes through the baby's alimentary canal without doing any damage, it would still constitute an attempt.

(2) that the person who was the subject of the crime was not within the vicinity of the locus of the crime at all the time the attempt to commit the crime was initiated; e.g. shooting into an intended victim's room with the intention of killing the person whilst, in fact, the person is absent from the room.

(3) that the intended victim was so strong that he overpowered the thugs sent to murder him, or had such a strong constitution that the poison could not harm him.

(4) that the person died of natural causes despite the fact that an effort to kill the person by some other means had been made.

(5) that unknown to the accused, the substance he believed to be a narcotic was in fact a harmless powder.

All these situations are considered to be situations of attempt. <u>However, in order to conclusively come to this point, the act done must have been such that it was an irrevocable step towards the commission of the offence and that it lends itself to no other interpretation ….</u>"

(Underlined emphases ours)

The bottom-line in this case is whether there can be a positive answer by way of evidence against any of the accused persons having taken actual steps towards the implementation of any of the elements of the offence of High Treason.

In this case, the Prosecution has through its thirteen (13) witnesses proffered evidence against A1, A2, A3, A4, A6, A7, A8 and A9 including videos, audios, the manufacture of arms and IEDs, procurement of ammunition, and communication equipment including mobile phones for ease of communication.

The Prosecution has also proffered evidence of what they say is a sketch of important installations which were to be compromised, recruitment of personnel, cautioned statements from the accused persons and oral evidence pointing to meetings, plans and actual steps taken, including the test-firing of guns which they say were manufactured in furtherance of what they say was a plot to overthrow the constitutionally elected government, thus pointing to a positive attempt.

In the circumstances, and in accordance with the law and the evidence required, we shall assess the alleged role of each of the remaining accused persons currently before the Court and make a determination as to whether the Prosecution has been able to meet the required standard in each person's case.

In the **FAISAL MOHAMMED AKILU CASE (cited supra)** the Supreme Court made it clear that the prosecution has *the duty to prove or establish the role each of the alleged conspirators played in accomplishing the crime."*

In those circumstances, having dealt with the generally required elements to prove the offences of Conspiracy to commit crime, namely, High Treason and the substantive offence of High Treason, the approach will be to set out each accused person and assess the evidence led against him on her and whether it meets the required evidential standard. In so doing, the defence mounted by the accused person will also be assessed.

A word of caution must be raised at this stage concerning any references that may be made to the late first accused person, Dr. Frederick Mac-Palm. Having been called beyond the jurisdiction of this Court by his demise, it is not lost to us that A1 is not a subject before us. However, there had been copious evidence led while he was with us, including the tendering of a significant number of exhibits and as such, there cannot be any useful discussion of the evidence one way or the other without reference to him. When that is done, it should not be construed to mean that A1 is being tried in his grave. It is the only means of dealing with the surviving accused persons fairly and in accordance with the law and evidence before this Court.

ON A2: DONYA KAFUI @ EZOR

The Court notes the presence of A2 in audios and videos and what the prosecution has offered as being his role in the manufacture of the guns

and IEDs which the prosecution alleges were in furtherance of the alleged plot to overthrow the constitutionally-elected government.

Before this Court is Exhibit D, an external hard drive with audios and videos some of which are offered to depict A2 manufacturing guns and IEDs. The most relevant of these audios and videos on Exhibit D are in particular the ones in folders named as Workshop Videos. PICT 0001 is a video showing an inspection of the magazines ordinarily attached to AK 47 rifles which were retrieved from the bottom of the container which the Prosecutions says used to house the X-Ray Unit of the Citadel Hospital, operated by A1.

Also in evidence are PICT 0002, PICT 0003, PICT 0005, PICT 0006, PICT 0007, PICT 0008 and PICT 0010. The latter referred to videos clearly show A2 working on the guns and IEDs. (**Please see also Exhibit G20, the transcription of the videos)**

The foundation laid before the tendering of these videos (i.e. Exhibit D) is of utmost importance in order to establish whether or not there was the requisite *mens rea* on the part of A2.

On the 18th of October, 2021, PW3, Sgt Awarf Kojo Sule testified inter alia as follows;

> *……..One day I was in the office at Teshie, Military Academy and A1 called me to come to his office at Alajo. When I went to his office, he informed me that, there has been some delays of the sources of the supply of the ammunitions and weapons so he would like to bring in*

someone from Alavanyo to manufacture the required weapons for us. I recorded him with video and gave it to PW1 to download it and gave me the empty device. About a week later, A1 called me again to inform me that the man who is going to manufacture the weapons has arrived at 37 station so I should pick him up to Dodowa. I drove from Teshie to 37 and I met a man with a bag and a tools box, and I asked him, is he the one A1 said I should bring and he responded Yes. I took him to Dodowa. When we got to Dodowa, A1 and A3 were in the house.

Q: Whose house?

A: A1's house at Dodowa.

Q: Continue.

A: A1 gave us a seat and we sat and he introduced the man to me as Mr. Ezor, the weapon manufacturer.

Q: Where is this weapon manufacturer?

A: The witness identifies A2 in the court room. After he introduced him to me, he introduced me to him as Sule the "bad boy". Afterwards, A1 informed A2 that some weapons were needed to stage a coup d'état and A2 replied that he can manufacture the required weapons for us to use. A2 opened his bag and brought out 2 AK-47 magazines and two pistols, foreign and local ones. I was not having my official recording device with me so I used my mobile phone to record the conversation. A1 wanted A2 to manufacture 15 pistols and 20 IEDs. That day A1 gave A2 GH¢2,000 to purchase materials from Timber Market.

Q: Can you tell the court for what purpose?

A: For the manufacturing of the weapons and the IEDs.

Q: Continue.

A: The next morning, A1 called to inform me that he had given additional GH¢5,000 to A2 to purchase the metals from Timber market. That same day around 13:00 hours, A1 called to inform me that I should try and go to Timber Market and pick A2 with the metals to the Citadel hospital, Alajo. I could not go because I was on duty so the next morning, I visited the Citadel hospital to check how far the manufacturing was going on. When I went I saw, A2 in process of manufacturing the pistols and the IEDs. He cut the metal pipes into sizes, 2 feet and 3 feet each. I recorded the activity of A2 and sent it to PW1 to download it and gave me the empty device.

During the manufacturing of the weapons, at least I visited Citadel hospital once a week and anytime I visited, I recorded the activities of A2 and sent it to PW1 to download it. A2 used powdered pepper, gun powder, sand and other materials to manufacture the IEDs. A2 manufactured 10 pistols and 22 IEDs and the two IEDs are for testing. A1 also told me that he had added some chemicals to the IEDs, when the IED exploded, within some meters, whoever gets in contacts with it will fall asleep.

A1 mentioned involvement of Senior Military Officers who are part of the coup plotters but no particular name was mentioned. A2 also made a call in my presence to the effect of buying AK-47 from a source but I did not know the sources of the supplier. When I realized that A2 had finished his work and wanted to pack off, I informed PW1 about it and he asked me to delay A2 so that he cannot pack off. I told A2 that a friend of mine is having a faulty revolver so I need him to repair same for me.

On 19th September, 2019, A1 called to inform me that I should buy a goat so that we can try the IED on the goat and I informed PW1 about

it and he told me that we should not go and fire any gun at the Military Range. A1 promised to pick me around 6:30p.m. That day, unfortunately they came around 10:30p.m. That day and he came with A2 and because I did not buy the goat, I told him that we can go and fire the pistols at the beach. We got to the beach around 11p.m so we fired one shot each, I fired one and A2 also fired one. After that, we saw soldiers from Southern Command main gate coming towards our direction. A1 was having the IEDs in his car boot. A1 opened the boot and threw the IEDs into the bush and the soldiers came in and arrested us with the two pistols. I called PW1 who was aware of my involvement in the group and he intervened and we were released but the two pistols were not given to us. So i went to my house at Teshie Camp and A1 and A2 also went to the Citadel hospital, Alajo.

Around 1:30a.m. , the next morning, A1 called me to try and go to the beach to bring the remaining IEDs. I went to pick the 2 IEDs at the beach and sent them to Alajo. When I got to Alajo, I saw A1 and A2 repacking the IEDs into a car tyre and pushed them under the X-Ray container and the pistols were concealed in a sack.

Q: What do you mean by X-Ray Container?

A: There is a 40 footer container at the hospital with an X-Ray machine and he hid the IEDs under the container and the pistols were also concealed in a sack and put inside the generator machine. I went back to the house, i.e. Teshie Camp. Around 8:30a.m., I went to PW2's office, Defence Intelligence and briefed him about how A1 and A2 are repacking the IEDs and the pistols so he told me to wait for him. He went to CDS to brief him about the new development so he came back and informed me that an order had been given that all persons involved in the coup plot should be arrested.

I was handcuffed at the General Headquarters, DI and was taken to Citadel Hospital. When we got to the hospital, we saw A1 and his IT man and he asked me "Sule what is the problem". I could not answer him. The Arresting officers wanted to arrest the I.T man and he told the Arresting Officers that the I.T man is not part of the group so all persons involved in the coup plot were arrested.

I did the recording with audio and video devices given to me by PW2 and sometimes I used my mobile phone to record and all these recordings have been given to PW1.

Q: When you gave all the audio and video recordings to PW1, what did he do with it?

A: He downloaded them on his PC and we watched and I confirmed Yes, that was what transpired during the meetings and he downloaded it again from his PC to an external hard drive which was given to the CID.

Q: Please take a look at this and tell the court what you have in your hand?

A: My Lords this is the hard drive that PW1 downloaded the audios and videos I recorded and he downloaded them on his PC and handed over to the CID.

Mrs. Obuobisa: *My Lords we wish to tender the hard drive of the audio and video recordings by PW3 to be tendered in evidence*

BY COURT

Before determining the admissibility or otherwise of the recordings and in order to ensure that the recordings given to the accused person are the same

as what is sought to be tendered, the latter shall be played in open court, before the court will record and deal with objection, if any.

The witness is sealed at this stage."

Eventually, the external hard drive was admitted after objections were raised and dealt with. At the end of the day, what weight will be given the videos is determinable by factors such as are set down in section 7 of the Electronic Transactions Act, 2008 (Act 772) and the Evidence Act, 1975 (NRCD 323) the details of which are contained in the Ruling of this Court dated 2nd November, 2021 the subject-matter of which was the admissibility of Exhibit D, the hard drive.

Apart from the considerations referred to immediately above, one has to consider the presence or otherwise of any other corroborative evidence to ascertain what weight to give the videos.

In this case, the existence of the guns and IEDs and their manufacture by A2 has not been denied by A2 and as such there is no call on this Court to make any further enquiry on them.

In FORI v. AYIREBI [1966] GLR 627, SC, it was held at Holding 6 of the head notes that;

> ***"When a party had made an averment and that averment was not denied, no issue was joined and no evidence need be led on that averment. Similarly, when a party had given evidence of a material fact and was not cross-examined upon it, he need not call further evidence of that fact."***

(See also:

- **TAKORADI FLOUR MILLS v. SAMIR FARIS [2005-2006] SCGLR 882)**
- **ASHANTI GOLDFIELDS CO. LTD. v. WESTCHESTER RESOURCES LTD. [2013] 56 GMJ 84 CA,**
- **HAMMOND v. AMUAH [1991] 1 GLR 89 @ 91).**

What remains outstanding is the purpose that A2 states they were for. The case of A2 that has to be considered are as he communicates in his statements to law enforcement officers and then in his viva voce evidence before this Court. In evidence before this Court are investigating cautioned statements dated as follows;

- 22nd September, 2019,
- 28th November, 2019 and;
- 21st December, 2019

The statements were marked as **Exhibits AN, AN1 and AN2 respectively.**

These statements were admitted after a mini trial per a Ruling dated 24th May, 2022. Once admitted, A2 was well within his rights to query the weight to be given these statements and he did. A2 alleged in this Court as well as in his charged statements (Exhibits AM and AM1) that due to the language barrier and being an Ewe speaker, he did not understand the import of the Twi language that was being spoken when his statement was being taken. This Court will however give due weight to the statements as the proposition being put forward by A2 is not borne out by the record. A careful observation of the videos will show, not only that A2 spoke English,

but understood Twi as well. In fact, throughout the videos showing himself at work in the container, A2 was listening to Twi programming on a Twi radio station which kept having the tag line Peace FM repetitively occurring in the video.

In his statements on caution, A2 says that he was commissioned by the late A1 to produce ten (10) each of pistols and explosives at the cost of GH¢2,300 and GH¢4000 each. He states that A1 gave him GH¢4,000 on two occasions. He states further that he was told by Doctor [in reference to A1, now deceased] that he needed to ***"finish all the work before 15/10/2019 because they will be taken [sic] them to Flag Staff House to make a coupe [sic]."***

He states that due to the exigencies of time, he invited one Stephen from Ayi Mensah to come and assist him and in the presence of the said Stephen, A1 had told him that the guns and IUDs were to be used to stage a coup at Flag Staff House. He states that the said Stephen, when A1 had left them doubted that the guns and explosives could be used to stage a coup at Flag Staff House and said that they should leave the premises because ***"Doctor is a bad man".*** (Please see Exhibit AN).

Without a doubt, a confession can properly found a criminal conviction if all the other elements are found to be present.

(Please see STATE v. OWUSU AND ANOTHER [1967] GLR 114).

In this case, apart from the confession of A2, can it be said that there are other means of establishing his guilt by proving that he knew the purpose for which the guns and IEDs would be applied?

In Exhibit AN1, A2 deals with which equipment he brought from Alavanyo and which ones he was given by A1.

In Exhibit AN2, he acknowledges seeing himself in the videos he had apparently been confronted with.

In his charged statements, A2 states, first, (in Exhibit AM) that he denies his previous caution statements on the ground of language and then in Exhibit AM1 that he would say nothing unless his lawyer is present.

In his evidence before the Court, he does not however deny that he was the one in the videos and working on what he called "the pipes", in reference to the IEDs. He insists that the IEDs were not lethal and that they had been stuffed only with gunpowder and were intended to be used for funeral musketry. There is however evidence on record to the contrary to establish that the guns and IEDs were actually lethal.

First of all, on the record is copious evidence of A1, Dr. Mac-Palm, referring to the IEDs as "bombs" in the presence of A2 (and A3 and PW3).

The evidence of **PW7, ASP Richard Kwasi Anaty** of the Forensic Science Laboratory of the CID Headquarters and the Exhibit H series he tendered are relevant for our purposes. In his Exhibits H, H1, H2 and H3, there is evidence that the five (5) pistols, two (2) pistols, nine rounds of 5.56 x 45 mm cartridges and sixty-three (63) 9 x 19 mm rounds of cartridges

respectively were all capable of being used and inflicting fatal wounds. In fact, the evidence before the Court is to the effect that the ammunitions found were used for a certain caliber of weapons, including M16 assault rifles used only by security agencies. This was uncontroverted in cross-examination.

Then there is the evidence of **Col. Gaspard Kwaning Asare (PW8)** and his Exhibits J, J1 to J11 being the report and samples on the IEDs which the witness describes as being homemade bombs. The evidence shows that in addition to gunpowder there were other things in the pipes which the witness describes as being not only the gunpowder (the main charge) but others described as augmenting payloads-nails, steel balls, needles, metal pieces etc. In three of the IEDs, in addition to the above-listed items, there was powdered pepper and Bupivacaine Spinal Injection (Spinal anesthaesia).

PW9, a Pharmacist with the Food and Drugs Authority, Eric Karikari Boateng's evidence and the report he presented on his findings, Exhibit L, covered various chemicals including Halothane BP, used for anaesthesia in medicine, and Bupivacaine, used for the same purpose. There were other chemicals as well.

In his evidence before the Court, A2 does not explain how these chemicals came to be part of pipes which he said were supposed to be used for funeral musketry and were supposed to contain only gunpowder. No real questions were put in the cross-examination of PW7 and PW8 and even

the investigating officers, PW10 and PW13 disputing these additions to the 22 pipes they found when the arrest of A2 along with others was done.

Yet another matter that cannot be ignored is the fact that none of the items was kept in the open but were concealed at the premises, a pointer to the fact that there was reason for A2, along with others, to keep them from sight. Apart from that, discussions were had between A2, A3, PW3 and Dr. Mac-Palm which shows that A2 and PW3 seemed to be apprehensive about the noise the grinding machine he was using was making and how people could be "inquisitive".

Finally, on the purpose for the manufacture of the guns and IEDs, we note that despite having stated that the guns and IEDs were for funeral musketry, there is no evidence that the late A1 was bereaved or that even A2 himself was bereaved or that there was an impending funeral that they had to attend which would need the musketry. The defence he puts up is not borne out by the evidence on record.

In the circumstances, we find as a fact, that A2 agreed to act together, at least, with A1, PW3 to manufacture weapons and IEDs and actually took steps towards that end, for the purpose of overthrowing the constitutionally elected government of Ghana a conduct that amounts to Conspiracy to Commit High Treason and High Treason.

A2, Donya Kafui alias Ezor, is accordingly found guilty on Counts one and two.

ON A3-BRIGHT ALAN DEBRA

Lawyer for A3 very ably sets out the allegations against A3 at page 20 of her written addresses. It is the case of the prosecution that;

a. A3 was tasked by A1 to recruit junior soldiers for the plot to overthrow the government;

b. A3 held a series of meetings with A6, A7, A8 and A9 [in addition to some of the prosecution witnesses] in furtherance of the plot to overthrow the government;

c. A3 also held discussions with A1, and PW3 on how to capture the President;

d. A3 also supplied mobile phones to some members of the group including A6, A7, A8 and A9 to facilitate their communication in the grand scheme of overthrowing the government;

e. That PW3 drew a sketch map of some vital installations on the instructions of A1 and A3 and

f. A3 also created a WhatsApp platform to recruit members for the group.

As was the approach in dealing with the case of A2, the evidence against A3 will be assessed to determine whether it meets the evidential standard of proof beyond reasonable doubt. In so doing, we shall also assess the

defence put in by A3 and make a determination of whether it raises reasonable doubt.

It is the case of the prosecution that A3 in furtherance of a coup plot held meetings at which plans were discussed. Most of the evidence led against A3 are electronic-audios and videos of meetings held with A6, A7, A8 and A9 and others and in some instances, discussions held with PW3 and the late A1.

In the case of A3, we simply have to assess the evidence offered to ascertain whether they actually go to prove what A3 is alleged to have done, i.e, conspiring and/or attempting, by any violent or other unlawful means, to suspend or overthrow or abrogate the Constitution or any part of it.

We note the role of A3 who, the prosecution says, held meetings with PW3, A6, A7, A8 and A9 as well as PW12, some of which are, by the case being put forward by the prosecution, corroborated by the videos and audios. He is also said, per the evidence put forward, to have had meetings and/or discussions, with A1, now deceased, and A2.

It is not in doubt that A3 had several meetings at which A6, A8 and A9 were present. These meetings, as is corroborated by the videos and audios, and not denied in essence by A3, took place at the Next Door Beach Resort and La Scala at Teshie. In the case of A7, there is only one meeting which he is alleged to have attended at the Next Door Beach Resort.

Further, in the videos involving A2 and the work he was doing, there is also one of A3, in a blue African print outfit holding a pistol. (**Please see folder marked "Workshop Selected Videos)**

Also of relevance is **Exhibit G13,** a transcription of meeting held on 28th July, 2019. In these discussions with A3 present and which he contributed to, for instance, discussions were had with Dr. Mac-Palm on how much ammunition would be needed, and the causalities. In fact, at page 6 of 28 of Exhibit G13, for instance, A3 was asking whether the trigger for detonating the "bombs" ***"Is it like remote control?"*** to which Dr. Mac-Palm responded inter alia that ***"...we don't want to kill too much, if killing comes, it is just the way it should be, but we should be able to do this in a way that casualties will be on the minimum side so those things he's talking about are very,very,very, dangerous things, they are very, very dangerous, he said they can scatter this whole place..."***

In the same meeting, discussions were had per Exhibit G13 about how to deal with the President, Vice President, Chief of Defence Staff etc, because if the President moves everyone moves.

In his testimony on the 2nd of November, 2021, PW3, Awarf Sule identifies A3 in various videos in discussions with A8, A9, and A6 as well as checking the progress of work in the manufacturing of guns and IEDs in the X-Ray container at the Citadel Hospital.

In Exhibit G7 a transcription of the meeting between Dr. Mac-Palm, PW3 and A3, (held on 26th April, 2019), extensive discussions of what charges

would accrue the people to be recruited, (50,000 each for about twenty people) and the need to test some of the weapons were held. There was even a statement made by Dr. Mac-Palm that *"…If we are successful then money shouldn't even be a problem…"*

(Please see also PICT 0015, PICT 0016, through to PICT 0044).

One can also not ignore Exhibit C, the sketch and the circumstances surrounding its drawing and the purpose for which it was done as put forward by the prosecution.

Of that, PW3 said in his testimony on the 18th of October, 2021;

> *During previous day [sic], A1 called to inform me to bring a sketch map of key installation areas that would be targeted during the coup d'état day. I gave the sketch to A3 to be given to A1. After he reviewed the map, he raised a lot of concerns about the targeted places so he asked me to meet A3 and the group so we will redo the map and add some key installation areas like the Air Force Base, Accra, Military Academy Training School Amoury and Base Ammunition Depot, Tema……*

He continued;

> *The next morning, I went to A3's office at Osu at Global Solution Centre near Photo Shoot. At this meeting, we finalized the sketch maps and we talked about how to get weapons and ammunitions to buy to facilitate the coup d'état and also the amount the soldiers will receive during and after the coup d'état and in this same meeting, we also talked about how to capture the President and his administrators and where to send them. I recorded this meeting with video. Myself and*

A3 moved from Osu to Citadel Hospital, Alajo to go and brief A1 about the progress.
At this meeting, we handed over the sketch map to A1 and also we briefed him about the amount the soldiers will take during and after the coup d'état. <u>The soldiers mentioned GH¢50,000 each.</u>

The evidence before the Court is to the effect that the sketch was eventually retrieved from the Citadel Hospital. Alajo, owned and operated by A1. Corroboratively, the GH¢50,000 mentioned by PW3 in his testimony as having been demanded by the people the prosecution said were participating soldiers is the subject of the discussion referred to supra and transcribed in Exhibit G13.

The Sketch, Exhibit C, when examined, does show places mentioned such as the area around Burma Camp etc, relative to Teshie Road/Junction, the 37 Military Hospital Road, Burma Camp/Labadi Villas, Flag Staff House, Madina Road etc. These points were discussed in a meeting at La Scala between A3, A9 and PW3 as borne out by the video labelled "Meeting to Discuss Plan" on Exhibit D and transcribed on Exhibit G3. It would be noted that the sketch was given to PW3 to work on at the **22nd June, 2018** meeting in the video labeled "Initial Videos" **(PICT 0004 and PICT 0006).**

That meeting at La Scala discussed in detail which roads will be blocked and the logistical support that would be needed.

In fact, an attempt to pinpoint each incriminating statement made by and in the presence of A3 would be needlessly cumulative as his presence in

the videos and audios is virtually ubiquitous. In fact, A3 from the evidence was the pivot or liaison between A1 and PW3, PW12, A6, A7, A8 and A9.

These things having been put forward by the prosecution, however, it is our duty to assess the defence put up by A3 and make a determination as to whether it raises a reasonable doubt as to what may have pertained which might be different from what the prosecution makes it out to be.

In his defence, A3 testifying on oath and as set out in his statements on caution and the submissions made on his behalf, indicated that he used to belong to a group with political aspirations called African Reform Movement (ARM) whose leader, one Dr. Nii Amo Darko, who was ordinarily resident in Australia and that Dr. Darko introduced him to Dr. Frederick Mac Palm (A1). Over time, A3 says, Dr. Mac-Palm broke away from ARM but he and Dr. Mac-Palm remained good friends. That in 2018, Dr. Mac-Palm communicated to him (A3), his intention to help the needy and indigents and that they then formed an NGO named Take Action Ghana (TAG) for that purpose. A3 testified that they organised some nurses and doctors held health screening programmes in a town called Ankwani near Otareso in the Eastern region. They also planned to donate 100 bags of cement for building a health facility in the town.

A3 further testified that after their work in Otareso, they proceeded to Naha near Tindoma in the Wa West district. That on their way from Accra to Naha, when they got to between Bamboi and Bole, they had police escort them to Naha. He testified that over there, they continued with their philanthropy and donated some cement bags for the construction of a health facility. That upon their return to Accra, they engaged some experts

on the state of their security in places like Wa. He further testified that they therefore contacted one **Sule Awarf** (PW3), a soldier, who promised to assist them with procuring pistols for their safety during their outreach programmes. He testified that when they met PW3, Dr Mac-Palm mentioned that he had a foreign registered gun. He further testified that he would help to procure about 5 or 6 more pistols for them.

He testified that, they continued their philanthropy in Asankragua in the Western Region and Kpando in the Volta Region. A3 testified that upon their return to Accra, they engaged PW3 in a series of meetings about the security arrangements for their future medical outreaches.

A3 also testified that on one occasion, PW3 called him on phone and asked him to pick up someone from 37 bus station but he declined because he was busy. That PW3 subsequently convened a meeting at Dr Mac-Palm's place at which A2, PW3 and others were present. That at the meeting, A2 was given the responsibility of repairing the pistols to be used for their medical trips and they discussed the monetary cost involved. That the next day, they convened a meeting with PW3 at Dr Mac-Palm's office where they inspected one of the five weapons that PW3 had in his possession.

He further testified that sometime later, after the repairs had been completed, PW3 wanted to meet him and test the pistols. That he declined because he was busy. Later that evening, Dr Mac-Palm called and informed him that he went with PW3 to test the weapons at Teshie where soldiers seized them.

He further testified that the next day he went to 37 DVLA and PW3 called and asked him to meet him in front of the military band. That as he stood there, he felt a slap on his face from behind. That he was assaulted by some soldiers. That he was subsequently arrested and put in a car in which PW3 was present. That PW1 asked him to direct them to his house which he did. That the house was searched before they proceeded to his office to search the place as well. That he was sent to NIB where he was asked to reveal his phone's password which he did. The next day, he said, he was sent to an office at Kawukudi for questioning. That the soldiers asked if he knew Dr. Mac Palm and he responded in the affirmative. That they subsequently inquired if he was aware that Dr Mac Palm had intentions of becoming president. That he answered in the negative. That he informed them about his political discussions with some soldiers and the NGO he had formed.

He further testified that the next day, he was sent back to NIB. That later that evening, he met lawyer Adawudu who informed him that his family members informed lawyer Adawudu to represent him. That one Godwin Ettoh pulled him aside into one of the interrogation rooms, without his lawyer. That Godwin Ettoh and PW10 asked him to identify 2 young men in the Daily Guide newspaper. That he was unable to identify them. That Godwin Ettoh and PW10 subsequently assured him that if he cooperated with them, they would send him to a country of his choice and buy him a house. That he was shown 4 photographs and asked to identify the people in the photographs. That he identified them as Valery Sawyer, Hon. Kofi Adams, ACP Agordzo (A10) and Godwin Ettoh. That he was subsequently given a paper to sign his consent to be used as a witness before his release. That they refused to allow him to read the contents despite repeated

requests. That they subsequently informed him that he would get good lawyers to defend him.

A3 asserts that the allegation that he, Dr. Mac Palm, A2, A4, A5, A6, A7, A8, A9, A10 were planning to overthrow the government is unfounded because he has never met A10, A5, A7 and A4. He says further that in the video before this Court, his voice was doctored to further the plot to implicate him in the coup allegations.

In the case of **CHANTEL v. KOI [2011] 29 GMJ 20 CA,** it was held that at page 51 of the Report that one important principle that should guide the tribunal of fact in determining the credibility of witnesses is the need to test the story of the witness as to its consistency with the probabilities that surround the currently existing conditions. In short, the test is whether the story of the witness is in harmony with the preponderance of probabilities which a practical and informed person would recognize as reasonable in those conditions. In other words, once adduced, evidence ought to be tested to determine if it makes sense in the circumstances, and as has been stated supra, the accused person in a criminal matter has a lower burden to only raise reasonable doubt.

See also **NTIRI & ANOR v. ESSIEN & ANOR [2001-2002] SCGLR 451**, it was held that it is the trial court which determines the credibility of a witness. These include the demeanour of the witness, the substance of his testimony, the existence or non-existence of any fact testified to by the witness etc.

Finally, it was held in the case of **TAMAKLOE & PARTNERS UNLTD. V. GIHOC DISTILLERIES CO. LTD,(SC)[2018-2019] 1 GLR 887, (reported on the online portal, www.dennislaw as [2019] DLSC 6580),** that where the court finds evidence not credible, it could also attach little or no weight to the evidence even though it as been admitted without objection.

With these principles of evidential assessment in mind, the defence of A3 will be dealt with.

The witness, A3, asserts that there was the need to ensure their security in their NGO work and that accounted for the need for them to repair some pistols that Dr. Mac-Palm already owned.

The question is, if one assesses the work that was being done by A2, Donya Kafui @ Ezor, was it repairs that were being made on guns, or it was manufacturing? It was the manufacturing of locally-made guns from scratch. What about the IEDs? No explanations are given for them. Additionally, what about the recruitment of about twenty (20) soldiers who needed to be paid GH¢50,000 each? Why was there the need to recruit twenty (20) soldiers at the cost of GH¢50,000 per head, just to keep security for community engagement or service?

The witness also does not explain in his testimony why being on philanthropic services demanded a detonation of "bombs" by "remote control".

There was no explanation for the sketch (Exhibit C) and the need to have a good view for the layout of the land here in Accra just to be able to help

deprived rural communities. Neither was there any explanation for the detailed planning discussed at La Scala, Teshie, with A9 and the need to block roads, the caution about military and other installations etc.

A3 claims that he was shown photographs to implicate some people. This court is well aware that none of those people is on trial before it, except for A10. There is also no evidence that any of these people is on trial before any other court on treason charges.

Finally, the Court notes that A3 volunteered statements in his own hand (Exhibit AP, AP1 and AP2) and can safely be presumed to have known what exactly what he put down.

Please see the unreported Court of Appeal (Cape Coast) case of **AWUTU ELLIS KAATI & ORS. v. THE REPUBLIC. (CASE NO. F22/40/2009), judgment delivered on 15th January, 2014.**

On the evidential value of confession statements please see:

BILLA MOSHIE v. THE REPUBLIC [1977] 2 GLR 418.

These statements were admitted without objection on 24th May, 2022. At no point, was it raised that A3 was just given any paper to sign.

In any case, the defence raised does not in any way absolve him as the explanation given is a clear afterthought and does nothing to settle the issues relating to the meetings held, what was discussed on the record before the Court, and all the unlicensed arms, ammunitions and IEDs

manufactured and recovered from the Citadel Hospital, Alajo. We find the defence to be a poor afterthought.

In the circumstances, we hold, and find as a fact, that A3 agreed to act together, at least, with A1, PW3 and others to have available weapons and IEDs and actually took steps towards that end, for the purpose of overthrowing the constitutionally elected government of Ghana a conduct that amounts to Conspiracy to Commit High Treason and High Treason.

He is accordingly convicted on counts one and two of the charge sheet.

ON A4: JOHANNES ZIKPI

It is the case of the prosecution that the alleged role of A4, Johannes Zikpi, was to deal with the aspects of communication including the procurement of devices. In taking evidence before this Court, there is no clear testament of any meetings between A4 and any of the other accused persons, except for A5. In fact, when asked, PW3, from the evidence of the prosecution before the Court, was in the thick of things, indicated that he had never met A4. There is no evidence on the record, as far as the enterprise of destabilizing the country and organizing a coup is concerned, that A4 was in contact or had anything to do with A2, A3, A6, A7, A8, A9 or A10.

In the WhatsApp communication before the Court, (**Exhibit AE at pages 122 to 135 as numbered on the direction of the Court when same was being tendered in evidence on 23rd February, 2022 by PW10, Francis**

Aboagye of the NIB) what communication there may have been A4 and any other accused persons were text messages exchanged between him and A1 and a brief reference made to A5.

In the entire communication between A1 and A4, what the two pieces of communication prosecution points to (and highlighted in green) are as follows;

At page 122;

11/21/17,7:04-Frederick Mac-Palm: Is it possible we can meet today?.....

11/21/17,13:11-Zikpi Gams: Good afternoon sir, there's a Emergency conference for all directors so Col. Gameli said we should make tomorrow that he is sorry inconvenience caused.

At page 135;

5/15/19-Zikpi Gams: That the type I am holding, it's a free credit which [sic]renewal every month, so there's no need to buy credit and you can call all network including voda phone line line. The officer said 2500 GHC cedis last.

It is expedient, for the sake of completeness, to look at the introduction that A4 did of himself to A1 in the beginning of the communication also at page 122;

11/20/17,13:53-Zikpi Gams: Good afternoon, sir, my name is JOHANNES KOMLA ZIKPI, i am from Kpando Aloyi and Agudzi my father is COL RTD PATRICK ZIKPI. Please I have heard about you from COL GAMELI who is my boss, that you are taking some steps to form a political party and I just want

to tell you that we are surely behind you and we will meet ourselves one day…

What may be the only incriminating piece of evidence in our view against A4 is the investigating cautioned statement dated 21/10/19 he volunteered which was accepted in evidence per our Ruling dated 30th March, 2022, as Exhibit AQ2, after a voire dire enquiring into its voluntariness and the charged statement relying on his previous statements, including Exhibit AQ2 (i.e.Exhibit AQ3) .

Still for the sake of completeness, it must be put on record that A4 has four (4) statements on record;

- An investigating cautioned statement dated 25/9/19 (Exhibit AQ);
- A further investigating cautioned statement dated 21/10/19 (Exhibit AQ1);
- Another further investigating cautioned statement dated 21/10/19 (Exhibit AQ2); and
- A charged cautioned statement dated 7/2/20 (Exhibit AQ3).

Of these statements the one that can be considered to be a confession of sorts is Exhibit AQ2. In that statement, A4 stated inter alia that;

"….At these meetings with Dr. Mac-Palm said that the economy was hard therefore preparing to overthrow the government. He asked me to look for communication gadgets and jammers that can jam all mobile networks and radio stations. I made doctor to be aware that he can get those jamming equipment [sic] outside the country. …..After I had told doctor that he could

only get the jamming equipment outside the country, I regularly called him on phone to know the progress of it. Doctor Mac-Palm told me that he was getting the equipment from either United States of America or United Kingdom. That the equipment will come already fixed to a vehicle. I remember in March 2019, I went to see the doctor for some BP medicine and I asked him when were the jamming equipment arriving and he said that he had not yet contacted the manufacturers. Doctor Mac-Palm once asked me to get some GOTAs but I told him that I cannot get them for him but will contact a friend called Cpl Ghartey to see. I took picture of a GOTA in my office and sent to doctor and he appreciated the type. I then informed Cpl Ghartey of the GOTA issue and he promised of getting some in town to buy for me. The said Cpl Ghartey told me that one GOTA cost GH¢2500 and I also communicated to doctor. Coporal Ghartey did not show interest in getting me the GOTAs again. Any time I asked him he did not answer me. Doctor once mentioned Bright name to me as someone who have been organizing soldiers for meetings regarding the overthrow of the government. He promised to introduce Bright to me but it never materialized. As we speak I don't know Bright. After Doctor mentioned Bright to me, he said that I should also mobilize some of the soldiers for him. I told him that I cannot do that because I am not a soldier."

The other statements are not confessions, except that on the charge statement dated 7/2/20, A4, writing in his own hand, relied on the statements given on 25/09/19, 21/10/19 and another one on 21/10/19 respectively.

In essence, what A4 states, is to the effect that he agreed to act together with the Doctor (A1) by way of assisting with the communication jamming

equipment which A1 was to source from abroad. He also took steps to get GOTAs for ease of communication.

What this Court has to determine is whether the confession of A4 without more is sufficient to prove his guilt in the circumstances of this case.

On the evidential value of confession statements please see:

BILLA MOSHIE v. THE REPUBLIC [1977] 2 GLR 418.

In that case, it was held, citing the Practice Note (State v. Aholo) [1961] G.L.R. (Pt. II) 626, S.C. that:

"A conviction can quite properly be based entirely on the evidence of a confession by a prisoner and such evidence is sufficient as long as the trial judge, as in this case, enquired most carefully into the circumstances in which the alleged confession was made and was satisfied of its genuineness."

This decision was expressly based on R. v. Omokaro (1941) 7 W.A.C.A. 146 where a conviction was based entirely upon evidence of confessions by the appellant; and the succinct joint judgment of the court reads as follows:

"The only question raised by this appeal is whether a conviction based entirely upon evidence of confessions by appellant can stand. The case of Sykes 8 C.A.R. p. 233 affords clear authority that such evidence is sufficient. The learned trial Judge enquired most carefully into the circumstances in

which the alleged confessions were made . . . and was satisfied of their genuineness."

Please see also **STATE v. OWUSU AND ANOTHER (cited supra) (HC)** which makes it a condition that for a confession to be upheld by the court, there must be evidence that an actual crime has been committed.

Finally, we rely on the most recent pronunciation on the matter by the Supreme Court in the case of **FRANCIS ARTHUR v. THE REPUBLIC CRIMINAL APPEAL NO. J3/02/2020 8TH DECEMBER, 2021 (available on www.dennislawgh as [2021]DLSC11148) and also on www.ghalii.org)** in which the Supreme Court stated (approving the rationes in the authorities quoted immediately above) that confession statements may be used alone in the conviction of an accused person and such evidence is sufficient as long as the trial judge, as in this case, enquired most carefully into the circumstances in which the alleged confession was made and was satisfied of its genuineness.

The Court continued citing the Supreme Court decision in the case of **STATE v. OTCHERE & ORS [1963] 2 GLR 463** *"where the Court per Korsah CJ emphatically stated that a confession made by an accused person in respect of a crime for which he is being tried is admissible against him provided it is shown by the prosecution that it was made voluntarily and that the accused was not induced to make it by any promise or favour, or menaces, or undue terror. The Court then concluded that a confession made by an accused person of the commission of a crime is sufficient to sustain a conviction without any independent proof of the offence having been committed by the accused. We are, therefore, clear in our minds that the criminal jurisprudence of this court leans towards the conviction of an*

accused person based on a voluntary confession to the commission of the crime charged. However, we are aware that in the peculiar facts of some cases where the only evidence available to convict was the confession statement, the courts decried the unreliability and indeed set aside a conviction solely on the confession without some other corroborative evidence that the crime was committed and by the accused person. Those cases form the exception rather than the rule. For example, in confession in murder and manslaughter cases, the courts have held that where the statement does not establish the corpus delicti, ie the concrete and essential facts which, taken together will prove that the crime has been committed, it would require some additional evidence in the form of corroborative evidence to demonstrate that the matters admitted did occur."

The decision in **State v. Otchere (cited supra**) is of particular value in this case because it is the only precedent of a case of treason in our body of decided cases. The case specifically dealt with confession statements in circumstances such as has occurred in the case of A4 and held, not only that a confession of an accused person on the commission of a crime is sufficient to sustain a conviction without any independent proof of the offence having been committed by the accused, but further that the principle regarding a confession of murder (or manslaughter) is that where the confession is direct or positive, i.e. where the confession establishes the *corpus delicti*, the confession is sufficient to sustain a conviction. But where the confession falls short of establishing the corpus delicti then further corroborating evidence is required to prove the corpus delicti. This principle does not apply to confessions of treasonable acts even though the penalty for the offence, like murder, is death.

(Please see holdings 7 and 8 of the headnotes of the Otchere case).

We have noted the invitation by Mr. Lartey for A4 that we disregard the statement. This Court carefully considered the evidence in the voire dire before the decision was made to admit the statement as AQ2.

After its admission, we have carefully considered the weight to attribute to it after cross-examination.

It must not however be lost on us that when all was said and done, A4 himself, in his charged statement (Exhibit AQ3), to which he raised no objection, relied on all his previous statements.

In our view, though, A4 was not only part of the conspiracy, having agreed to act and having made plans. In his statement, he also indicated that he told Doctor that communication-jamming equipment could not be sourced from Ghana. He also, from his own showing, took actual steps by attempting to procure GOTAs for the price of GH¢2,500 from Cpl. Ghartey, PW4 towards the end of overthrowing the constitutionally-elected government of the day. But for the timely intervention of security forces, this vision might have been realised.

In the case of A4, therefore, having found that there was an actual plot and steps taken to overthrow the constitutionally-elected government of Ghana, having been in agreement with A1 to take steps to procure communication equipment intended to jam the radio and mobile networks, and to procure GOTAs so that their communication would be secure, all towards that end, A4, we find, has engaged in a

conduct that amounts to Conspiracy to Commit High Treason and High Treason.

He is accordingly convicted on counts one and two of the charge sheet.

ON A6: WOII ESTHER SAAN DEKUWINE

The prosecution has presented A6, WOII Esther Saan Dekuwine, a soldier, before the Court as one of the persons who was involved in the scheme of things to execute the plan of a violent overthrow of the constitutionally elected government. The evidence led, also electronic, per the case of the prosecution, is that A6 was involved first, in the recruitment of fellow soldiers to engage in the overthrow and secondly was part of meetings held towards that end.

In evidence, as put forward by the prosecution in Exhibit D, are videos and audios of meetings held to discuss the planned event. The Prosecution, per PW3, Awarf Sule, put up the case that A6 was the one who invited PW3 to the first meeting he attended at which the proposed overthrow of government was discussed. In the video of 22nd July, 2018 on Exhibit D, one would note that there are two pieces of electronic evidence; a video, which PW3 explained did not completely capture the meeting and an audio which he says was complete. In that meeting, A6 is captured as having been present with A7, A8 and A9 as well as PW3, PW5, Staff Sgt. Jonas Yeankye Kofi Nantonah, and others. Other evidence of A6 having attended the meeting of 22nd June, 2018 is Exhibit E, which captures the fifteen

(15) "Personnels" present with A6 listed at No. 8 although her first name is misspelt as "Erster".

There are two different pieces of transcriptions on record for the meeting of 22nd June, 2018. The two were explained by PW3 as having been brought about by having a video and an audio back up, with the video not being as efficient in capturing the meeting as the audio was. The transcriptions, video and audio, are in evidence as Exhibits G and G1.

In Exhibit G, which is the video that PW3 indicated did not completely capture the meeting of 22nd June, 2018, certain statements attributed to A6, Esther Saan Dekuwine, pertaining to how to deal with the President, are not present.

In Exhibit G1, (which audio is also in evidence **on Exhibit D as 22nd June 2018 Audio MP3)** A6 is alleged to have said, inter alia that;

Female: Akuffo Addo, that man, we will finish him…..

Female: looking at it, this man we have to eliminate him

BRIGHT: Who?

Female: Akuffo Addo

We have to meet him?

Female: we have to eliminate him…

Female :I say we will hold them on [sic] hostage

Despite the gaps in the video, there are other indications in the discussion that need to be commented on as can be seen in Exhibit G1 which was an

introductory meeting of Bright and the soldiers and setting out mattes including the allowances they wished to be paid.

In view of the discrepancies between the two (the audio and video) of that day's meeting we shall not attribute much weight to it as far as the involvement of A6 is concerned. We attribute more weight to the videos and what was said on them than the audios for obvious reasons, not least the fact that the audios do not have images on them and give room for speculation as to the identities of the speakers.

That said however, it must not be lost on us that in fact, in her own evidence, A6 does not deny her presence at that first meeting of 22nd June, 2018. Not having denied it, then, as has been discussed in previous paragraphs, there is no need to cumulatively discuss admitted evidence.

A6 says though, in her testimony before the Court (her adopted witness statement), that she was so put off by what was discussed that that was the only meeting she attended as she purposed not to attend any other and never did. She also denies having said that the President be taken hostage and eliminated.

A6 also denies the authenticity of the electronic evidence brought into court.

Apart from the meeting of 22nd June, 2018, though, there is in evidence an audio and a video of another meeting held on 8th July, 2018 also at the Next Door Beach Resort at which A6 was present. It is important at this juncture to assess what exactly was discussed at that meeting and

whether A6 was an actual participant or an observer, having even denied ever having attended any other meeting after the first one.

On Exhibit D, on the Folder labelled as **"Final Video 2" (transcribed in Exhibit G2),** A6 actively participates in this meeting held with A3 and PW3 asking for unpaid allowances etc, especially about *"the boys"* when *"we are risking our lives".* In that video, A6 was seen to be irritated by the suggestion that *"I should use my own money to buy credit and call you for what?"* to which A3 responded;

BRIGHT: no see you are an executive member you don't speak like that."

A6 did not deny her executive position. Rather, she responded that going forward, she would buy credit and call. At the conclusion of the meeting on that day, A3 (Bright) asked that they submit their respective budgets.

In our candid opinion, not only was A6 aware of the plot to overthrow the government, she was also very involved in it as a kind of leader for "the boys", "an executive member" insisting that their allowances be paid them. The allusion to risking their lives and per her own showing, her dismay at what was discussed at the first meeting and her attendance at the second is testament to the fact of having been aware of the nature of plans that were ongoing to overthrow the constitutionally elected government.

It is our view though, that apart from the agreement to act together and facilitating the recruitment of "the boys", including PW3, A6 cannot be tarred in the same brush as for instance A2 and A3 who took actual steps to have arms and ammunition manufactured, etc. In our view, the

prosecution has been able to prove the conspiracy charge as A6 agreed to act with the others.

A6 is accordingly convicted on count one and acquitted on count two.

ON A7: CPL SEIDU ABUBAKAR

Per the evidence put before the Court it is indicated that A7, Cpl. Seidu Abubakar, is said to have participated in the meeting of 22nd June, 2018 at which A3 introduced himself to the soldiers at the Next Door Beach Resort and then went ahead to sell the plan to them.

A7 does not deny that he was at the Next Door Beach Resort. His explanation for his presence there that day is that he and A8, LAC Ali Solomon, who is a friend and colleague in the Air Force and also lives with him at the Air Force Base, Burma Camp, had gone to the Teshie ADB Market to buy fish. He says that on their way back home, A8 received a call from A9, Cpl. Sylvester Akanpewon, and told him that he had a meeting with some people at Next Door Beach Resort. He says that while A8 and A9 were having discussions, he (A7) was seated elsewhere under another summer hut and did not participate in the discussions.

In evidence against A7 is Exhibit E, the list written by PW5, Sgt. Nantona. He is supposed to have been captured at No. 15, Ali Kenkeni Solomon.

We have assessed the evidence against A7 , including closely studying the videos, their audios and the transcribed conversations as put forward by the prosecution. We have been unable to identify A7 in any of the videos.

While there are clear images of people sitting at a table having discussions and the sounds to go with it, we have seen nothing like that pertaining to A7.

We have also been unable to see or hear in any of the other exhibits (including the transcriptions) any speech or question attributed to A7 to demonstrate that he agreed to work together with the group towards a constitutional insurrection. The evidence led by the prosecution does not show that A7 ever attended any other meeting with the group. There is no evidence that he was in any form of communication with them after that 22nd June, 2018.

A7's statements Exhibits AT and AT1, A7, in a statement written in his own hand indicated that he had not been engaged in any meetings with anyone and was innocent. That is consistent with the evidence on record.

In the **FAISAL MOHAMMED AKILU case cited supra**, Appau JSC in his Judgment at page 291 of the report made a statement which has guided our decision;

"This Court held further in the Logan case (supra) that mere presence at the scene of a crime without more is not proof of guilt. As the appellant rightly contended in his written statement of case, the trial judge and the learned majority justices of the first appellate court should have asked themselves whether it was not possible for an innocent person to be among evil doers, be in their company and yet have no knowledge of their intentions. ……. The two lower courts completely failed to subject the explanation or story of the appellant to the three-stage test propounded by this Court in the Lutterodt and Amartey cases supra, which every court is obliged to do

before pronouncing the guilt of an accused person. We want to lay emphasis on the principle in criminal trials that; all reasonable doubts that make the mind of the court uncertain about the guilt of the accused are always resolved in favour of the accused. By reasonable doubt is not meant mere shadow of doubt. Where, from the totality of the evidence before a trial court, a soliloquy of; 'should I convict', or 'should I acquit' takes control of the mind of the court, then a reasonable doubt has been raised about the guilt of the accused. The appropriate thing to do, in such a situation, is to acquit, as required by law."

In this case, taking into consideration the totality of the evidence, apart from his name appearing on a list which he did not prepare, such as an attendance sheet that a participant in a meeting would write a name and sign against, there is nothing linking A7 to a planned coup. Even the testimony of PW5 does not reveal that on the 22nd of June, 2018 when he saw A7, he (i.e. A7) made any comment or contribution or asked any questions. It must be borne in mind that from his evidence, PW5 was already acquainted with A7 and he (PW5) made a list of people who were at the venue.

In applying the three-tier test, and having assessed the totality of the evidence, including the fact of A7 not having ever spoken even on the first meeting of 22nd June, 2018, and there not being his voice or image in any audio or video, the question to ask is whether his explanation is reasonably probable and raises reasonable doubt. We most certainly think so.

To reason that the soldiers who knew about the planned plot and failed to report (even assuming that he got to know about it in the one meeting)

were conspirators, is not borne out by the law. It is one thing to be charged with Conspiracy to commit High Treason and High Treason and another to be accused of Misprision of Treason.

Please see section 181 of Act 29 and STATE v. OTCHERE (Cited supra).

Misprision of Treason is not what A7 has been charged with. It is also not one of the offences for which a person may be convicted other than charged contained in sections 153 to 161 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30). It must be noted also that Misprision of Treason is a first-degree felony with its own rules of law and procedure. It cannot be the subject of this trial.

A7 is accordingly acquitted on counts one and two.

ON A8: LAC ALI SOLOMON

In the evidence before the Court, A8, Ali Solomon, is alleged to be part of the group that used to meet to put plans in place towards the end of a violent overthrow of the constitutionally-elected government of the day. In the videos (and audios) before the Court, A8 is seen and heard of in two; the meeting of 22nd June, 2018, the one dated 8th July, 2018. (Next Door Beach Resort)

In his defence, A8, Ali Solomon, in his statement**s (Exhibits AU, AU1 and AU2)** and evidence-in-chief, he denies knowledge of any plan to overthrow the government or having participated in any discussion on the matter. According to him, he was uncomfortable with the A1's interest in political

talk because he says that he asked Akanpewon whether the man was a doctor or a politician (Please see Exhibit AU1) and that he eventually told Sylvetster (A9) that *"if they are having such gathering, he should not call me…."*.

We are however unable to accept the explanation of A8, Ali Solomon, because same is not borne out by the record. Unlike A7, he attended several meetings and did contribute to the discussions. There is nothing to show that he had no interest in the plot and was not a participant in it.

A8 is in similar circumstances as A6, an active participant in discussions pursuant to an agreement to act together towards the overthrow of the government. In discussing the law and the evidence relating to A6, a lot has been said about the meetings held and it will be needless to repeat them. It is sufficient to say that the prosecution has satisfactorily led evidence to the required standard to prove a charge of conspiracy to commit the Crime of High Treason against A8.

In similar circumstances to A6, we hold that A8 cannot be considered to be in the same circumstances as A2 and A3 who took crucial steps to have arms and ammunition manufactured, etc. In our view, the prosecution has been able to prove the conspiracy charge as A8 agreed to act with the others.

A8 is accordingly convicted on count one and acquitted on count two.

ON A9: CPL SYLVESTER AKANPEWON

In the evidence before the Court, A9, Cpl Sylvester Akanpewon, the prosecution has put forward the case that A9 was part of the group that used to meet to put plans in place towards the end of a violent overthrow of the constitutionally-elected government of the day. In the videos (and audios) before the Court, A9 is seen and heard of in three; the meeting of 22nd June, 2018, the one dated 8th July, 2018. (Next Door Beach Resort) and the third which was held at La Scala, Teshie (labelled as Meeting to Discuss Plan) (PICT 0005 and PICT 0006). He is referred to in those videos as Sly. The third meeting is the one at which the Sketch (Exhibit E) and how it would be used was discussed in greater detail. Discussions of how to block certain routes were also held.

A9, was an active participant in the meetings and was also the repetitive voice asking for their "allowances". The La Scala Video clearly had him strategizing with A3 on how to go about the operation. In the first meeting of 22nd June, 2018, he asked the pertinent question of how many people they were "targeting" to recruit.

A9 has put up a defence in his statement and evidence-in-chief, that the allowances he was asking for was for them to participate in A1's NGO. This is a clear afterthought. There is no evidence on record indicating a history of A9 with any NGO or any discussion about any NGO. One would ask, what would community service for an NGO have to do with blocking a road, jamming communications or risking one's life to the extent that one had to fear firing squad as was seen in some of the conversations the accused persons and others held?

A8 is in similar circumstances as A6, an active participant in discussions pursuant to an agreement to act together towards the overthrow of the government. In discussing the law and the evidence relating to A6, a lot has been said about the meetings held and it will be needless to repeat them. It is sufficient to say that the prosecution has satisfactorily led evidence to the required standard to prove a charge of conspiracy to commit the Crime of High Treason against A9.

In similar circumstances to A6 and A8, we hold that A9 cannot be considered to be in the same circumstances as A2 and A3 who had arms and ammunition manufactured, etc. In our view, the prosecution has been able to prove the conspiracy charge as A9 agreed to act with the others towards the overthrow of the constitutionally elected government of Ghana.

A9 is accordingly convicted on count one and acquitted on count two.

ON COUNTS THREE AND FOUR: ABETMENT OF CRIME NAMELY HIGH TREASON:

In the preceding paragraphs, we have explained in detail what the elements of the crime of High Treason are. It has also been explained, that unlike other offences, High Treason is the one unusual offence whose inchoate of an attempt, could actually amount to the substantive crime.

Of relevance to the determination of the elements of the offence of abetment of crime, namely High Treason are s.180 of Act 29 and Article 3(3)(b) of the 1992 Constitution which states;

(3) Any person who –

(b) aids and abets in any manner any person referred to in paragraph (a) of this clause;

commits the offence of high treason and shall, upon conviction, be sentenced to suffer death

Similar to the dearth of explanation of the word "attempt", "aids and abets" are also not defined under the particular part of the law. i.e. Article 3(3)(b). Recourse will therefore be had to section 20 of Act 29.

That legislations states;

(***1) A person who, directly or indirectly, instigates, commands, counsels, procures, solicits, or in any other manner purposely aids, facilities, encourages, or promotes, whether by a personal act or presence or otherwise, and a person who does an act for the purposes of aiding, facilitating, encouraging, or promoting the commission of a criminal offence by any other person, whether known or unknown, certain, or uncertain, commits the criminal offence of abetting that criminal offence, and of abetting the other person in respect of that criminal offence.***

In the Introduction to Chapter 6 of her book, **THE GENERAL PART OF CRIMINAL LAW- A GHANAIAN CASEBOOK VOL. 2**, at Page 489 on Inchoate Offences and accessorial liability in relation to abetment, Prof. Henrietta J.A.N. Mensah – Bonsu explains the concept of abetment very

succinctly. The concept cannot be explained in a manner better than the learned author put it;

"The crime of abetment is committed when a person renders assistance to another for the purpose of committing a crime, and thereby makes a contribution to the doing of a criminal act. At the inception of the commission of an offence, various actors may be involved although only one person i.e., the principal may be found to have actually performed the actus reus of the offence. Such a person, i.e., the principal actor would be punished for that activity. Such punishment would however, not affect those who actually may have made the commission of the offence possible. Therefore, without the rules on the liability of accessories, all such important personalities in the criminal enterprise would escape punishment. For instance, in a scheme to rob a bank, there would be several participants, i.e. the master- brain who devised the whole scheme; the insider who provided information vital to the robbery; the person who provided the plans of the premises to be robbed; the carpenter who manufactured the special ladder to be used, the driver of the get- away car; the watchman who agreed to be absent on that day to facilitate the operation; the look-out whose job it was to ensure that the principals would be warned if the police approached the scene; and those who purported to provide the spiritual strength to the scheme such as the pastor or jujuman or mallam who blessed the scheme or provided potions to guarantee the success of the scheme; all of whom would be linked by common design to commit one crime. Rules on accessorial liability thus ensure that each of these people would be liable for the assistance rendered, for perhaps, without

their individual contributions, the principals may never have attempted the crime."

She continues at pages 490-491 by stating in respect of S.20(1) of Act 29;

"This is a long list of acts that could render one an accessory to a crime. As long as one shares the mens rea of the offence, no act is harmless if done to further the objects of the criminal enterprise."

In his Book **CRIMINAL LAW IN GHANA** at page 83, the learned author Dennis Dominic Adjei states of the offence of Abetment under section 20 (1) of the Criminal Offences Act 1960, Act 30 as follows:

" the offence of abetment requires proof of mens rea of the accused person. The position of the law has been that the offence of abetment of crime requires mens rea. It means the intention to aid as well as knowledge of the circumstances and the proof of the intent of the accused person involves proof of a positive act of assistance voluntarily done".

SEE ALSO : NATIONAL COAL BOARD V. GAMBLE [1959 1 QB 11.

In the case of **COMMISSIONER OF POLICE v. SARPEY AND NYAMEKEY [1961] GLR 756 @ 758**, the Court speaking through Sarkodee JSC, spelt out the ingredients constituting abetment under Sections 20 (1) of the Criminal Offences Act 1960 (Act 29), as follows:

"In order to convict a person of aiding and abetting it is incumbent on the prosecution to prove that the accused did any one of the acts mentioned in

subsection (1) of section 20. Under subsection (2) a person who abets a crime shall be guilty if the crime is actually committed (a) in pursuance of abetment, that is to say, before the commission and in the presence or absence of the abettor and (b) during the continuance of the abetment, that is to say, the abetment must be contemporaneous in place, time and circumstance with the commission of the offence. In our view, an act constituting an abetment in law must precede or it must be done at the very time when the offence is committed".

In this case, the Prosecution has put forward the case that A5 and A10, participated in discussions to assist in the alleged coup plot. We shall assess the cases against them in similar fashion as we have done with the other seven (7) accused persons and determine whether their charges are sustainable or not.

ON A5: COL. SAMUEL KODZO GAMELI.

From the case before us, Col. Samuel Kodzo Gameli, the fifth Accused person (A5) is a senior military officer of the Ghana Armed Forces who was invited on the 22nd day of September 2019 for questioning following the discovery of a whatsapp communication between him and one Kalister, a nurse at the Citadel Hospital after the arrest of A1 and the others. The evidence against A5 was provided mainly by PW2, PW10 and PW13.

The evidence of PW 2 against A5 was to the effect that A5 introduced A4 to A1 for the purpose of providing communication support to enable A1 carry out the plot to overthrow the constitutionally elected government. In

this regard, PW 2 refers to Exhibit AE being the extraction of the WhatsApp communication between A1 and A4.

It is the further evidence of PW 2 that when A5 was invited for questioning in the presence of the four Colonels, he admitted his knowledge of the activities of A1 and his group regarding the coup plot. PW 2's further testimony was to the effect that A5 again confessed his involvement in the coup plot when he was interrogated by the BNI now NIB.

PW 2 also testified that during the intelligence gathering process, one of the operatives informed his team that A1 told him, the aforesaid operative that there were senior military officers involved in the plot. He also testified that the operative also gave them a report of a grey pick up vehicle suspected to be one assigned to the A5's unit which was found at the premises of A1's hospital i.e Citadel Hospital.

When PW 2 was subjected to Cross examination by Counsel for A5 on the 7th day of July 2022, this is what ensued;

"Q: I am putting to you that the only thing A5 admitted to you and the 4 Colonels was that he knows about the activities of TAG ?

A: we asked him about his knowledge of the coup plot and not TAG. So his admission was for the coup plot and not TAG.

Q: I am putting it to you that when you suggested the coup plot to him, he denied it and said that he knew only about TAG?

A: it is not true but the same day he also confessed at the BNI and that confession was captured on video."

In the course of the Cross examination by Counsel for A5, PW2 said that the mention of the pick up only aroused their suspicion and they started to mount surveillance on A5. Again, in an answer to a question under cross examination by Counsel for A5, PW 2 said that A1 never mentioned the senior military officer who brought that grey pick up vehicle to the hospital.

The evidence of PW 10 against A5 is that through interrogation, it was revealed to them that he (A5) was informed by A1 of having contracted A2 to manufacture weapons but according to PW 10 when they questioned A5 why he had not informed the authorities about it, he answered that he was waiting for the "H- hour"

During cross examination of PW10 by Counsel for A5 on the 4th of April 2022, this is what transpired;

"Q: Your last but one answer, you said that it is on record that A5 has admitted the allegations you are making against him, on which records can we find the said admission?

A: I believe some bits of what took place at the interrogation room can be found in the diary of action if my memory will serve me right."

The evidence by PW 13 against the A5 was that in his bid to further his plans to over throw the government, A1 discussed the idea with A5 and asked for his support to which the A5 supported and cautioned A1 to be careful of his meeting place with the soldiers at Next Door Beach Resort. It is his further evidence that A5 in affirming his support introduced A4 to A1 to help in the handling of their communication equipment. He testified further that A1, A4 and A5 met at the Citadel Hospital and discussed the possibility of obtaining jamming equipment to jam all communication

facilities in the country on the day of the coup and also discussed the possibility of getting Gota sets for the coup plotters to ease their communication and to avoid detection.

The defence of the A5 is that of total denial of the offence levelled against him. The denial therefore puts the burden of proof of the guilt of this Accused person (A5) on the prosecution. That is to say, it was for the Prosecution to prove all the ingredients of the offence against the A5 beyond reasonable doubt.

In this case, the Prosecution has to prove that A5 rendered assistance to the coup plotters for the purpose of advancing the agenda to overthrow the government.

It is our duty at this stage to evaluate the totality of evidence proffered by the prosecution to determine whether the prosecution has been able to prove the guilt of A5 beyond reasonable doubt.

The Prosecution in its closing address filed on 21st November 2023 submitted that it has led evidence to establish that it was A5 who introduced A4 to A1 to assist him with all his communication needs regarding the plot to overthrow the government. The Prosecution submitted further that A5 admitted knowledge of the activities of A1 but indicated that he was waiting for the H-Hour. Finally, it is the submission of the Prosecution that there is a recorded confession of A5 at the BNI now NIB therefore submits that it has been able to discharge the burden of prove against the 5th Accused person.

Counsel for the A5 in his Closing Address filed on 17th November 2023 submits that the Prosecution failed to discharge its burden of proof against the A5 as the evidence led was so discredited that this court should not rely on same. Counsel further submits that the statements of the co-accused person without corroboration cannot be used against the A5 and cited the case of **the EKOW RUSSEL case (cited supra)**

In evaluating the evidence against the A5, we shall examine the three critical areas that the prosecution sought to connect the A5 to the offence of Abetment levelled against him. These are;

i. The introduction of A4 to A1 for the purposes of providing communication support to enable A1 carry out the plot.

ii. Confessions at the interrogations.

iii. A4's confession which links A5 to the offence.

i. The introduction of A4 to A1 for the purposes of providing communication support to enable A1 carry out the plot.

On the issue of A5 introducing A4 to A1 to assist in the coup plot, the main evidence which the prosecution sought to prove this fact is Exhibit "AE". We have carefully examined this exhibit and our finding is that whereas from the prosecution's own case, the coup plot started sometime in 2018, it is clear that from exhibit AE particularly on page 122, it was rather the A4 who introduced himself to A1 as a subordinate of A5 in 2017 when the idea of the coup from the evidence before us, had not been formed. In the result we find that this exhibit cannot support the fact that A5 introduced

A4 to A1 for the purposes of providing communication support to enable A1 carry out the coup plot.

ii. <u>Confessions at the interrogations.</u>

On the issue of the confessions by A5 before the four colonels and the NIB, from the totality of evidence before us, we do not find any evidence of A5 confessing to the offence of abetment of High Treason. In the first place, what was said to have transpired before the four (4) Colonels if it is anything to go by, was an admission of his knowledge of the activities of A1 and his group which could amount to an offence other than the one A5 is charged with.

The prosecution sought to lead evidence to the effect that A5 during his interrogation at the BNI admitted the offence. This has been denied by the Accused. In fact, PW 2 in his evidence and under cross examination said A5's confession was recorded but no such evidence was tendered before us.

PW 10 also said under cross examination that A5 confessed and the confession is available and is contained in the dairy of action yet no such evidence was produced before this court. Since the issue of A5's confession, was challenged by A5, it was incumbent on the prosecution to introduce evidence to substantiate same, especially so when the prosecution had alluded to corroborative evidence in the nature of recordings. Failure to tender the aforesaid recorded evidence is fatal to its case.

In the result, we find that A5 did not confess to the offence for which he stands charged of.

iii. A4's confession which links A5 to the offence.

The next issue is the confession of A4 in his interrogation as well as his Caution and Charge Statements which were tendered in evidence as Exhibits "AQ series".

Clearly this is a case of a Co-Accused person's evidence being sought to be used against a Co-Accused. We agree with the submission of Learned Counsel for the A5 that this piece of evidence, coming from A4 can ground the conviction of A5 only if same is corroborated.

Please see:

- **G/L/CPL. EKOW RUSSEL v. THE REPUBLIC (SC) (2020) Crim.LR 180 (Available in www.ghalii.org as [2016] GHASC 41) cited by Counsel for the A5; and**
- **OTCHERE & ORS. v. THE STATE (cited supra).**

In this case, we do not find any corroboration of the evidence of A4 which is being sought to be used against A5. In this Court, PW2, PW10 and PW13 all sought to rely on the same confession by A4 as it were, to corroborate the same piece of evidence. That is not, and cannot be corroboration in law since it is the same evidence that is being used as corroborative evidence. In other words, repetitiveness or repetition is not corroboration. (**Please see the case of DANIELS v. THE REPUBLIC (1971) 1 GLR 31.**

We have also considered the pieces of evidence by PW 2 about the mention of senior military officers' involvement in the coup plot and also the mention of a grey pick up vehicle. Our assessment of those pieces of evidence is that they are mere suspicions without more and multiple suspicions cannot amount to proof in law.

From the totality of evidence on record, it is our finding that the Prosecution failed to lead evidence to support the charge of Abetment of the crime of High Treason or Treason levelled against the A5

A5 is accordingly acquitted on count three.

ON A10: ACP BENJAMIN KWASI AGORDZO

The 10th accused person (A10) was arraigned before this Court on one count of abetment of crime as follows:

COUNT FOUR

Abetment of crime: namely, High Treason contrary to Article 3 (3) (b) of the 1992 Constitution and section 180 of the Criminal Offences Act 1960 (Act 29).

PARTICULARS OF OFFENCE

ACP Benjamin Kwasi Agordzo between November 2018 and September 2019 in Accra in the Greater Accra Region abetted Dr. Frederick Mac – Palm in his attempt to overthrow the Constitution of the Republic of Ghana through the removal of the President and the Executive by violent means.

The facts provided by the prosecution in support of the charges on which all accused persons were arraigned before this Court, have already been sufficiently reproduced in this Judgment.

For ease of refence, this Court will reproduce the relevant portions of the facts provided by the Prosecution, in support of the charge of abetment brought against A1. The Prosecution stated in part as follows:

The summary of the prosecution's case as will be detailed in this Judgment is that A10 offered pieces of advice to A1 to replicate "Arab Spring" demonstrations in Ghana, drafted a speech to be read at the demonstrations and paid the sum of Two Thousand Ghana Cedis (GH¢2,000.00) to A1, with the purpose of encouraging A1 in his attempt to overthrow the Constitution of the Republic of Ghana, through the removal of the President and Executive, through unlawful or violent means, thereby abetting A1 in the commission of High Treason.

This Judgment has established that there was indeed a plot by A1 and other accused persons now convicted, to attempt to overthrow the Constitution of the Republic of Ghana, through the removal of the President and the Executive from Office by violent or unlawful means.

The standard of proof required in a criminal action as provided for by the **EVIDENCE ACT 1975 (ACT 323**), has already been stated in this Judgment.

Both the burden of persuasion and the burden of producing sufficient evidence to establish the guilt of A10, rests on the prosecution. The prosecution must produce evidence before this Court to establish the guilt of A10 beyond reasonable doubt, while A10 need only raise reasonable doubt as to his guilt.

To establish the guilt of A10, witnesses were called by the Prosecution to testify. The relevant portions of their testimony will be reproduced and or summarized below.

The Prosecution called PW2, Major-General Nicholas Peter Andoh, a former Director General of Defence Intelligence of the Ghana Army. He testified that he knows A10 as a colleague from the Police Service of Ghana. On A1's alleged involvement in the plot to overthrow the Constitution (coup plot), he testified at page 20 of the proceedings as follows:

> *"The extracts from A1's telephone in particular, brought out some revelations that were unknown to the surveillance or monitoring team. It included active participation of A10 on the WhatsApp platform pledging his full support for the activities of the TAG making suggestions about the need for a security component of TAG and also advocating for massive violent demonstrations typical of the Arab spring. He indicated that the elements of the Arab spring existed in Ghana and were awaiting a trigger and this was captured in the WhatsApp chats.*

He indicated that, A10 was outside the country for peace keeping mission at that time. He indicated again that even though he was outside, he was going to participate fully in the activities of the TAG. When A10 came on leave on 18th February 2019 in Ghana and on the 7th of March, 2019, he A10, met A1 at Coconut Groove Hotel where they discussed matters relating to the coup plot and he gave out GH¢2,000 as a contribution to the cause".

On 23rd February 2022, PW10, Francis Aboagye, a Deputy Staff officer of the National Intelligence Bureau (NIB), formerly BNI, who was a member of the investigative team testified among others, that in the course of the investigations, the accused persons were interrogated and a decision was taken to access their phones. According to PW 10, an application (Exhibit AD) was filed for retention and examination of the phone and an order obtained (Exhibit AD 1).

The said examination according to PW10 was carried out by the Technical Wing of the NIB which generated a Report (Exhibit AE) signed by Cabral Ayembillah, (PW 11) who was the 2nd in command at the material time.

PW10 stated that Exhibit AE contained WhatsApp conversations extracted from A1's Galaxy S7 Edge phone (Exhibit AF). He said Exhibit AE, contained conversations between A10 and A1 which revealed that A10 was aiding A1 and TAG in their bid to overthrow the Constitution of the Republic of Ghana. According to PW 10, the first communication between A1 and A10 was a WhatsApp voice call since A10 was out of the jurisdiction of Ghana, after which A1 sent a WhatsApp link of TAG to A10 who joined the TAG WhatsApp group. PW 10 said that after A10 joined the platform,

he sent a message to A1, promising to contribute to discussions on the platform and to be involved in any activity the group embarks on.

PW 10 further testified that from Exhibit AE, discussions on the Executive platform of TAG reveal that TAG planned to use civil protest or mass protest and particularly violent demonstrations, to overthrow the Government and force out the President and Executive and this was supported by A10, who in his contributions on the platform stated that the factors that led to the "Arab Spring" are present in Ghana just waiting for a trigger. PW10 stated that A10 offered ideas on how to organize the security services to initiate what he termed a "big bang" to make an impact. According to PW 10, A10 expressed his regret in being restrained by his profession from participating fully and had occasion to caution A1 on his use of certain words on the platform for security reasons.

According to PW10, Exhibit AE shows that on 5th February 2019, A10 sent a draft speech to be used by A1 and TAG for their intended demonstration which was to serve as vehicle for the overthrow of the government and on 21st of February 2019, at the Coconut Grove Hotel, A10 held discussions with A1 on and gave the sum of Two Thousand Ghana Cedis (GH¢ 2,000.00) to A1, to assist with the attempt of overthrowing the Constitution, with a promise to make further contributions.

PW 10 testified further that the TAG had a General Platform and an Executive Platform and that all sensitive matters on the plan to overthrow the Government was discussed on the Executive Platform. According to PW10, the plan to overthrow the Government was to take place in two phases. He said the 2nd and last phase was to culminate in a massive

demonstration leading to occupation of Flag Staff House and Parliament, following which members of TAG were to cause a shutdown of government and appeal to international community to supervise elections and the replacement of the 1992 Constitution of Ghana.

PW 10 also stated that based on the fact that A10 gave pieces of advice to A1, provided a draft speech to be read at the demonstration and gave funds for the intended action, investigators came to the conclusion that A10 was abetting A1, in his attempt to overthrow the government through violent or unlawful means.

The Prosecution also called PW11, Cabral Ayembillah, a cyber security and digital forensic officer at the NIB to testify in proof of the Prosecution's case. PW 11 confirmed that he was on the team which extracted electronic communication from the devices of the accused persons. He identified Exhibit AE as communication extracted from A1's Samsung Galaxy S7 Edge (Exhibit AF).

The Investigator, PW13, Detective Chief Inspector Michael Nkrumah, a Police Officer stationed at the NIB Headquarters gave testimony for the Prosecution. The evidence of PW13 sought to support the testimony of PW10 in material particular, on Exhibit AE and the alleged role of A10 in the said coup plot.

PW13 also tendered in evidence, the Ordinary Statement of A10 dated 4th November 2019 and two Investigation Caution Statements of A10 dated 4th and November 2019 which were marked as Exhibit AW – AW 3, respectively.

All prosecution witnesses as stated above were cross- examined by Counsel for A10. This Court, having at the end of the prosecution's case determined that A10 had case to answer, A10 opened his defence. He testified and called a witness (DW1 for A10).

The summary of A10' s defence is that he satisfied himself about the objectives of TAG and found them to be lawful, prior to joining the WhatsApp group. He contends that he was on the TAG THINK TANK, TAG GENERAL PLATFORM AND TAG SPRING BOARD platforms, but was never put on the TAG Executive Platform where the Prosecution asserts that the discussions to overthrow the government through unlawful or violent means were held. A10 further testified that his views on Arab Spring are not secret and that he has made same known on several public fora. A1 said his views have always been to caution that measures be taken to avoid a spontaneous uprising by dissatisfied citizens. He testified further that he made payment of Two Thousand Cedis (GH¢ 2,000.00) to A1, on the one occasion he met him, to support a medical outreach planned by TAG and not to support a coup plot. A10 asserts that his statements in Exhibit AE were taken out of context by the prosecution.

The Defence of A10 will be considered in detail.

THAT A10 WAS ON THE TAG EXECUTIVE PLATFROM

The Prosecution tendered Exhibit AE , being WhatsApp communication on TAG Platforms extracted from A1's phone, to establish its case. The prosecution asserts that the plan to overthrow the Constitution through violent means was discussed extensively on the TAG Executive Platform as per Exhibit AE and that A10 was on the platform and had knowledge of the said plans and discussions.

A10 has denied knowledge of the said plans insisting that he was not on the TAG Executive platform. The evidence adduced by A10 establishes that the TAG Executive Platform was created by A3 on 8th June 2018 at 17: 28 hours (page 4 of Exhibit AE), after which he put some persons on the platform. A10 was not one of the persons added to the platform. From Exhibit AE, A10 was not seen as a participant of discussions on the various groups at pages 4 to 72 of Exhibit AE. Exhibit AE shows at page 76, that A1 first contacted A10 on 11 / 8/2018 at 9: 14 hours after which contact, A10 joined the TAG Platform on 11 /9/ 2018 (page 74 of Exhibit AE). A10 testified that he was on the TAG General, TAG Springboard and TAG Think Thank Platforms where no discussions of a coup plot were held.

Under cross- examination of PW 10, by Counsel for A10 on the latter's presence of the TAG Executive Platform on 5th April 2022 (pages 28 and 28), the following transpired:

"*Q: A10 is not on the TAG executive platform, True or False?*

A: To the best of my knowledge, he was put on the TAG Executive platform.

Q: You recall the date on which he was put on the page?

A: No my Lords, it does not come up readily.

Q: I put it to you that A10 was never put on the TAG Executive platform.

A: I cannot recollect but that is possible"

On A10's membership of the TAG Executive Platform, *c*ross–examination of PW13 by Counsel for A10 on 15th June 2022 (page 8), was as follows:

"Q: As an investigator, did you profile the numbers or persons on the TAG executive platform?

A: No my Lords. Not all but we know some of them.

Q: So you are aware that A10 has never been on the executive platform of TAG, are you not?

A: I cannot remember now.

Q: I put it to you that A10 was never added to the TAG executive platform as you would want this court to believe.

A: I cannot recollect whether he was on it or not.

Q: I further put it to you that because A10 was not on the executive platform, he could not have known of the alleged discussions about the overthrow of government through massive demonstration.

A: That may be true and based on that A10 was not charged with conspiracy but abetment of crime to wit High Treason".

From the foregoing, A10 by his evidence, raised reasonable doubt as to his presence on the TAG Executive Platform.

CONVERSATIONS BETWEEN A1 AND A 10 AS CAPTURED BY EXHBIT AE

The Prosecution also asserts that conversations between A1 and A10 in Exhibit AE, establish that A10 was aware of the said coup plot.

The said conversations between A1 and A10 can be found on pages 73- 91 of Exhibit AE.

The summary of the Prosecution's case on conversations between A1and A10 in Exhibit AE, is that the registration of TAG as a legitimate organization, was a smokescreen with an aim of overthrowing the Constitution and for this purpose, A 10 encouraged A1 in his attempt to overthrow the constitution by aiding A1 as follows:

I. **That A 10 encouraged A1 to set up a TAG security Unit for a " big bang" aimed at overthrowing the constitution. (Conversation on 18/11/16 @ page 76 of Exhibit AE).**

The Answer of A10 to the prosecution's case as stated above, per his evidence, was that prior to joining TAG, he requested and obtained the objectives of TAG from A1 and satisfied himself that its objectives were democratic prior to joining the WhatsApp group. That the information sent to A10 describes TAG as a non - governmental civil society organization (NGO) which seeks to mobilize people of various professions, such as nurses, teachers, Army, Police and many other professions, to educate,

train, sensitize and mobilize the citizens towards effective, efficient and equitable government among others**. (Conversation of 11/9/18 @ pages 73 & 74 of Exhibit AE).**

He said it was based on this understanding that he sought to find out from A1 if TAG had been registered as an NGO, so it could start speaking to the media and have various groups such as TAG on Sanitation, TAG against election violence, TAG on good governance and package itself to attract attention and funding from some organizations. **(Conversation of 11/16/2018 @ page 81 of Exhibit AE)**

A10's testimony in his defence of advising A1 on the setting up TAG Security Unit to start with a " big bang" was that same was misunderstood and taken out of context by the Prosecution. A10 testified that the said conversation was a continuation of the discussion on setting up units of TAG. A10 said that his advice was in answer to a question by A1, on whether to set up separate Units for the security services, such as TAG army and TAG police and his advice was to set up TAG Security to address security related issues. (**Conversation of 11/18/2018 @ page 76 of Exhibit AE).**

Under cross- examination A10 stated that the said TAG security was to discuss security issues in the media, as is done by many other security experts and was not meant for any unlawful or violent purpose.

A10 testified that the word "big bang" was not used to connote an unlawful act but meant to connote beginning something with energy and excitement in an attention-grabbing way.

II. **That A 10 cautioned A1 to be careful of the use of his words for security reasons. (Conversation of 1/7/19 @ page 81 of Exhibit AE) and also stated that he was gagged by his profession.**

A10 explained that his statements on his constraint by his profession was due to the fact that as a police officer, he could not join in the demonstration by TAG and not because of his support for a coup plot, since he was unaware that a coup plot had been hatched by A1.

III. **That A10 further held discussions with A1 to replicating the "Arab Spring" in violent demonstrations aimed overthrowing the constitution(Conversation of 1/5/19 @ page 81 of Exhibit AE).**

A10 explained per his testimony that the term "Arab Spring" connoted mass spontaneous uprising and a series of unplanned demonstrations which broke out in several Arab countries. A 10 said that as someone who lectures on, and makes presentations on Conflict prevention, management and transformation at various fora and institutions in Ghana and abroad, his views on political vigilantism were well known. He tendered in evidence, **Exhibits 11, 12 , 13 and 14** in support of his evidence of his public views on political vigilantism. A10 also testified that since his views were publicly known, A1 sought his opinion on "Arab Spring" and his statement on conditions for an "Arab Spring" being present on Ghana, was in response to a question by A1 and was not offered for the purpose of planning "Arab Spring" or violent demonstrations in Ghana, since "Arab

Spring" demonstrations were spontaneous mass uprising and were therefore unplanned demonstrations.

IV. <u>That in furtherance of the coup plot, A10 drafted a speech for A1, in preparation for the "big bang", (Conversation of 2/5/19 @ page 81 of Exhibit AE).</u>

A 10 testified that from conversations at Page 81 of Exhibit AE, it is clear that he never drafted a speech as alleged the prosecution. He said he forwarded a speech from another platform to A1 when A1 requested for speech to be read in the course of a planned lawful demonstration. A10 testified further that he sought clarification from A1 when he stated that the need to start drafting planning and after A1 had responded that they needed a speech on the reason for the demonstration he forwarded the said speech as guide.

V. <u>That A10 promised to support A1 by making financial contributions in furtherance of the coup plot and did in fact contribute the sum of Two Thousand Ghana Cedis (GH¢ 2,000.00) to A1 to support the coup plot as established by A10's admission in Exhibits AW – AW1 – AW3.</u>

A10 also testified that he made a contribution of Two Thousand Ghana Cedis (GH¢ 2000.00), to A1 for the purpose of an outreach programme, as he had promised to contribute to the funding of such activities from a prior conversation between him and A1 (pages 76 and 77 of Exhibit AE). A10 testified that he volunteered the said information of payment of the amount to the investigators in his Statements (Exhibits AW, AW1 to AW3),

which they otherwise were not aware of. A10 stated that the contribution was for an outreach programme, as per his Statements and contrary to the prosecution's testimony he made no admission of making the contribution to support a coup plot.

A10 testified further, that at all times his intention had always been to support a democratic cause and was unaware of a coup plot by A1. A10 said that in pursuit of his democratic ideals, he consulted one Sampson Lardy Ayenini a lawyer and discussed with him his intention to seek constitutional interpretation of the powers of the National Security Council or Ministry in recruiting, training, clothing, arming and deploying an entity called National SWAT.

The said lawyer, DW1 for A10 testified in corroboration of the said testimony of A10. He testified that he received an email from A10 in February 2019, on the said subject matter, after which A10 sent him message on 4th February 2019, on the specific relief he would be seeking from the Supreme Court.

VI. <u>That A10 held conversations concerning the coup plot with A1 prior to joining the TAG WhatsApp group and at Coconut Grove Hotel prior to paying the sum of Two Thousand Ghana Cedis (GH¢ 2,000.00) to A1 and therefore had knowledge of the coup plot.</u>

A10 denied holding conversations on a coup plot with A1 in his phone conversation with A1 or at Coconut Grove Hotel, contending that the Prosecution failed to produce the contents of the said conversations to establish its case.

Upon evaluation of the entirety of the evidence on record in respect of A1, this Court finds that;

There was no evidence to support the Prosecution's case that A10 was on the TAG Executive Platform and had knowledge of the attempt to overthrow the Government of the Republic of Ghana through the said platform.

It is clear from pages 73 and 74 of Exhibit AE that indeed A1, sought the objective of TAG and was given a profile which suggested that same was a democratic NGO which seeks to mobilize people of various professions, such as nurses, teachers, Army, Police and many other professions, to educate, train, sensitize and mobilize the citizens towards effective, efficient and equitable government. At page 81 of Exhibit AE , A10 advised that TAG be registered as an NGO if same had not been done already, so the various groups could start speaking to the media to attract funding.

The suggestion by A10 that TAG Security be formed rather than TAG Army and TAG police at page 76 of Exhibit AE, was preceded by conversation at page 75 of Exhibit AE, on the various groupings of TAG membership, as TAG Sanitation, TAG against election violence, TAG on good governance. The said suggestion by A10, was made after A1 had sought the opinion of A10 on the categorization of the members of TAG from the security services.

From Exhibit AE, the statement by A10 at page 76 of Exhibit AE, was a follow-up on the conversation that the various TAG groups speak to the media on various issues and that TAG security should start with a big

bang and then thereafter to make the category stronger, so they could see themselves as a unit. The context of the conversation lends credence to A10's explanation that the terminology "big bang" in that context used at page 76 by A10, was for the TAG activities to commence in an attention-grabbing way and not in an unlawful way.

From the context of the conversations in Exhibit AE, there is no evidence that A10's statements that he was restrained by his profession from doing more and that A1 should exercise caution in his language, were made in pursuance of a discussion on violent demonstrations to overthrow the Government. A10 sought clarification from A1, when at page 81 of Exhibit AE, the latter spoke of drafting a speech as part of the "planning and plotting". In response to the question by A10 as to what A1 meant by the phrase, "planning and plotting", the latter clarified that TAG required a further reason for their demonstrations beyond the Ayawaso incident. Upon this clarification, A10 forwarded a speech which he said was posted on another platform by a friend, to A1 for his consideration.

The speech was clearly not drafted by A10, as contended by the prosecution, a fact which PW 13 admitted under cross- examination. The said speech at pages 81 and 82 in summary speaks about political vigilantism, how same could be a threat to security and the need to talk dispassionately about the said matters, to avoid them turning against the system that created them. The speech did not contain statements advocating violence.

The prosecution produced no evidence to establish the allegation that in the first WhatsApp voice call between A10 and A1 and the in the conversation between A10 and A1 at the Coconut Grove Hotel, the two discussed the coup plot or the attempt to overthrow the Constitution and the Government through violent means.

In further conversations between A10 and A1 in Exhibit AE at page 84, 0n 2/21 /2019, A1 asked A10 to contact him after the latter's meeting with Sampson. DW 1 for A10's evidence that he had a first email from A10 in February 2019, to confirm his address followed by an email on 4th February 2019 requesting for a constitutional interpretation, supports A10's case of consulting a lawyer for advice.

At pages 84 and 85, A10 informed A1, that one lawyer had advised that TAG should hold on, to enable the Short Commission complete its work and observe how the recommendations will be implemented and that the said advise should be heeded. This advice was again repeated by A10 to A1 when the latter stated that people were being mobilized from the Agbogbloshie and Kaneshie markets and the GPRTU.

Upon evaluation of the totality of the evidence adduced before this Court, we find that A10 has by his evidence detailed above, provided reasonably explanation to the Prosecution's contention that A10 drafted a speech for A1. A10 also provided a reasonably probable explanation to the Prosecution's contention that the conversations between A10 and A1 and A10's payment of the sum of Two Thousand Ghana Cedis (GH 2,000.00) to A1, were for the purpose of aiding and abetting A1, to overthrow of the Constitution of the Republic of Ghana.

Upon a charge of abetment, where intent or requisite *mens rea* of A10 is necessary to establish the crime of abetment as already stated, we find that the prosecution has failed to establish that A10 knowingly or purposely, offered assistance to, or encouraged A1, in his attempt to overthrow the constitution of the Republic of Ghana through the removal of the Executive and President from Government by violent means.

The prosecution having therefore failed to discharge its burden of producing evidence upon which a reasonable mind will come to a conclusion that A10 aided and abetted A1 in his attempt to overthrow the Constitution of the Republic of Ghana, through the removal of the Executive and President from Government by violent means, the offence of abetment of High Treason, with which A10 has been charged has not been proved beyond reasonable doubt.

SEE: ESSENTIALS OF GHANA LAW OF EVIDENEC BY S. A BROBBEY @ page 51.

Upon the foregoing, this Court finds A10 not guilty to the charge of abetment of crime, namely High Treason. Accordingly, A10 is hereby acquitted.

SENTENCES:

Donya Kafui@Ezor (A2), Bright Alan Debrah Ofosu@Bright Alan Yeboah (A3), Johannes Zikpi (A4), WO II Esther Saan Dekuwine (A6), Lac Ali Solomon (A8) and CPL Sylvester Akanpewon (A9). This court having found

you guilty of conspiracy to commit crime, namely High Treason and High Treason as your respective cases may be as contained in this Judgment, the sentence of the court upon you is that you be taken from hence to the prison designated by the Republic and that you be there hanged by the neck until you are dead and that your body be afterward buried in such place as the President may order. And may God have mercy on your souls.

SGD
A. S. ASARE-BOTWE (MRS.) J.A.
(JUSTICE OF THE COURT OF APPEAL)

SGD
H. AMALEBOBA (MRS.) J.A.
(JUSTICE OF THE COURT OF APPEAL)

SGD
S. OPPONG (J.A)
(JUSTICE OF THE COURT OF APPEAL)