

**IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA – A. D. 2024**

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Registra
REGISTRAR COURT OF APPEAL

Criminal Appeal No.

THE REPUBLIC

RESPONDENT/APPELLANT

VRS

1. CASSIEL ATO FORSON 1ST ACCUSED/APPELLANT/RESPONDENT

2. RICHARD JAKPA 3RD ACCUSED/APPELLANT/RESPONDENT

NOTICE OF CRIMINAL APPEAL

Take Notice that the Respondent/Appellant herein (hereinafter referred to as the Appellant) being aggrieved by and dissatisfied with the majority decision of the Court of Appeal (*coram: Opoku-Acheampong, Bright-Mensah, Ackah-Boafo JJA*) contained in the judgment dated 30th July 2024 doth appeal to the Supreme Court on the grounds set out in paragraph 3 and will at the hearing seek the reliefs set out in paragraph 4.

And the Appellant further states that the names and addresses for service within the jurisdiction of the persons directly affected by the appeal are set out in paragraph 5.

2. PART OF THE DECISION COMPLAINED OF

The majority decision and the consequential order acquitting and discharging the Accused/Appellants/Respondents.

3. GROUND OF APPEAL

(a) The majority on the Court of Appeal misdirected itself in the application of the fundamental principles regarding the standard of proof required in determining whether a case has been made for the accused persons to answer.

Particulars of misdirection

- i. The majority decision failed to give due regard to the fact that whether a “prima facie case” has been made by the prosecution is the true standard required in assessing whether the prosecution has made a case for the accused persons to answer.
- ii. The majority decision failed to give due consideration to the case of the prosecution, as required by law, in the determination of whether a case had been made for the accused to answer.
- iii. The majority on the Court of Appeal unnecessarily dwelt on possible defences for the accused in determining whether a case had been made by the prosecution.
- iv. The majority’s consideration of possible defences for the accused persons showed that the accused persons indeed had a case to answer and the trial court was justified in calling upon the accused to open their defence.
- v. The majority on the Court of Appeal’s consideration of possible defences for the accused persons at the close of the prosecution’s case was unfair to prosecution, since the prosecution had indeed discredited those possible defences in cross examination of witnesses called by the accused by the time of the judgment of the Court of Appeal.
- vi. The majority on the Court of Appeal failed to appreciate the relevant factors in determining whether a prima facie case has been established for the accused persons to answer, viz. whether the evidence given by the prosecution satisfied the

ingredients of the offences with which accused are charged, and not possible defences for the accused.

- (b) The holding by the majority on the Court of Appeal that the establishment of the letters of credit did not constitute payment under the contract, is contrary to the clear evidence in the case and untenable.
- (c) The majority's holding that the Ministry of Health's default caused financial loss to the State (and not the act of the 1st accused in authorising the establishment of the letters of credit) was laden with fundamental errors and occasioned a substantial miscarriage of justice.

Particulars of errors

- (i) The majority failed to consider the evidence on record that the Ministry of Health specifically ordered Big Sea General Trading LLC to stop producing the ambulances before the vehicles were shipped.
 - (ii) The majority failed to consider the fact that the Ministry of Health never requested the Ministry of Finance to authorise Bank of Ghana to establish the letters of credit which were used to pay for the vehicles.
 - (iii) The majority ignored the fact that the 1st accused without any request from the Ministry of Health wrote to both the Bank of Ghana and Controller and Accountant-General authorising them to establish the letters of credit, which resulted in Big Sea General Trading LLC shipping the vehicles to Ghana.
- (d) The majority decision failed to appreciate and correctly apply to the evidence, the essential ingredients of the offences with which the accused are charged.

- (e) The holding by the majority that the authorisation for the letters of credit to be issued was regular, and that the 1st Appellant/Respondent acted in his official capacity was fraught with grave errors and occasioned a substantial miscarriage of justice.

Particulars of errors

- (i) The majority on the Court of Appeal made this finding based on an assessment of the evidence at a time that the 1st Appellant/Respondent had not opened his defence to enable his position to be known.
- (ii) The majority on the Court of Appeal failed to appreciate the fundamental point that acting in an “official capacity” is no defence to the offence of wilfully causing financial loss to the state.
- (iii) The majority decision failed to appreciate that in criminal law, acting under “superior orders” is no defence available to the 1st accused.
- (iv) The majority decision ignored the clear evidence led by the prosecution that officers of the Ministry of Finance relied on the directives of the 1st accused/appellant in the processes to establish the letters of credit and not the substantive Minister.
- (v) The position held by the majority that the prosecution ought to have proven that the Minister for Finance, Seth Tekper, did not authorise the establishment of the letters of credit was unjust and unreasonable.
- (vi) 1st Appellant/Respondent at close of prosecution’s case had not given evidence of any authorisation he had for signing Exhibits A and B2.

- (vii) The majority on the Court of Appeal ignored the clear evidence led by the prosecution that the 1st accused's act in authorising the establishment of letters of credit directly resulted in the shipment of the vehicles into the country.
- (f) The holding by the majority of the Court of Appeal that the claim by the prosecution of a lack of parliamentary approval for the transaction was an afterthought is fraught with errors, unfair to the prosecution and has occasioned a substantial miscarriage of justice.

Particulars of errors

- (i) Lack of parliamentary and other necessary approvals form part of "lack of due cause and authorisation" aptly captured in the particulars of offence.
- (ii) The prosecution's evidence led at the trial showed a lack of parliamentary approval for the transaction which was an international business or economic transaction.
- (iii) Prosecution was not required, at law, to explicitly state lack of parliamentary approval on a charge sheet filed in a summary trial when same is contained in the evidence led.
- (g) The majority on the Court of Appeal was wrong in holding that the trial judge amended the charge sheet for the prosecution.
- (h) The majority on the Court of Appeal gravely misconstrued a report on a visit by the National Ambulance Service to Dubai as an addendum to the contract between the Government of Ghana and Big Sea General Trading LLC.
- (i) The Court of Appeal erred when it concluded there was no nexus between the Respondents and the offence.

(j) The judgment is unreasonable having regards to the evidence on record.

4. **RELIEFS SOUGHT FROM THE SUPREME COURT**


1. That the decision and consequential order of the Court of Appeal dated 30th July 2024 acquitting and discharging the Accused/Appellant/Respondents be set aside.
2. That the Accused/Appellants/Respondents be ordered to continue with their defence at the trial High Court.

5. **NAME AND ADDRESS OF PERSONS DIRECTLY AFFECTED BY THE APPEAL**

Cassiel Ato Forson
Parliament House
Accra

Richard Jakpa
Unnumbered House
Ashale Botwe
Accra

DATED AT THE OFFICE OF THE ATTORNEY-GENERAL, ACCRA, THIS 7TH DAY OF AUGUST 2024.


YVONNE ATAKORA OBUOBISA
DIRECTOR OF PUBLIC PROSECUTIONS
FOR: ATTORNEY-GENERAL

THE REGISTRAR
COURT OF APPEAL
ACCRA

AND TO:

- 1. 1ST ACCUSED/APPELLANT/RESPONDENTS OR HIS LAWYER
DR. ABDUL BAASIT AZIZ BAMBA
AZIZBAMBA & ASSOCIATES
NO. 5, NII TORGBOR AVENUE LINK
NEAR PEKAN HOTEL
EAST LEGON, ACCRA**

- 2. 3RD ACCUSED/APPELLANT/RESPONDENTS OR HIS LAWYER
THADDEUS SORY
SORY @ LAW
HOUSE NO. 04, SECOND CLOSE
BOUNDARY ROAD EXTENTION,
NEAR UBA BANK
EAST LEGON
ACCRA**