IN THE CIRCUIT COURT, OFFINSO, ASHANTI REGION, HELD ON MONDAY 31ST OCTOBER 2022, BEFORE HIS HONOUR FREDERICK K. TWUMASI

SUIT NO. CC. 305/2022

THE REPUBLIC

VRS

ABDUL SHAKUU YAWUZA @ MAKAVELI

Accused person present. Unrepresented by counsel
Chief Inspector Paul Ayaba Asore, for the Republic – present

JUDGMENT

Brief facts / Introduction

The accused person was charged before court on 28th June 2022, with the offence of stealing contrary to section 124(1) of the Criminal Offences Act 1960, Act 29. He pleaded not guilty to the charge.

A summary of the brief facts of the case as presented by the Prosecution were that on 10th May 2022 at about 6.30 am, Abdul Shakuu Yawuza alias Makaveli, the accused person herein, stole a Techno Pouvoir mobile phone belonging to the complainant Armiyaau Abdul Hamid whilst he slept on a mat inside a mosque at Offinso Saboa after offering morning prayers. The accused person was arrested in connection with another case and the complainant was informed and he went to the police station to identify him as the person who stole his phone because his own private investigations led him to know it was the accused person who stole his phone. The Police conducted investigations and the accused person was subsequently charged for court.

Prosecution's burden

The accused person having pleaded not guilty, the Prosecution assumed the burden to prove his guilt beyond reasonable doubt as prescribed by sections 11(2) and 13(1) of the Evidence Act, 1975 (NRCD 323). This burden stems from the fundamental principle of criminal law enshrined in article 19(2)(c) of the 1992 Constitution of Ghana, to the effect that a person is presumed innocent until he is proven guilty or pleads guilty.

Ingredients of the offences

The Prosecution discharge their burden if at the close of their case they prove all the essential ingredients of stealing to establish a prima facie case. Appau JA as he then was, put this in the following words in the case of **The Republic v. Kwabena Amaning alias Tagor & Another, [2009] 23 MLRG 78 / Suit No. ACR 4/2007,** dated 24/07/2008:

> *"The paramount consideration in deciding whether a prima facie case has been made or not is; whether the prosecution has proved all the essential ingredients or prerequisites of the offence charged. No prima facie case is made where the prosecution was unable to prove all the essential ingredients. Even if one of the ingredients is not proved, the prosecution fails and no prima facie case is made."*

The offence of stealing is defined in section 125 of Act 29 as follows:

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

To establish the crime of stealing in accordance with sections 124 and 125 of the Criminal Offences Act, 1960 Act 29, and to ground a conviction, the Prosecution must prove that the accused person herein appropriated a thing (here the mobile phone), that the appropriation was dishonest, and that the accused was not the owner. Koranteng-Addow J. affirmed this in the case **Antwi v. The Republic**
[1971] 2 GLR 412, where she held at page 415 that *"Under our law a person steals if he dishonestly appropriates a thing of which he is not the owner."*

The Prosecution called two witnesses namely Armiyaau Abdul Hamid (PW1) and the investigator D/Cpl Isaac Osei Botwe (PW2) in support of their case.

Prosecution's case

PW1's evidence was that on 10th May 2022 at about 6.30 am, he placed his Techno Pouvoir mobile phone beside him whilst he slept on a mat inside a mosque at Offinso Saboa after offering morning prayers. He later woke up and detected that his mobile phone had been stolen. Based on his own investigations, he suspected the accused person of being the person who stole the phone. On 26th June 2022, he had information that the accused person had been arrested at the Offinso Police station in a different case. He identified the accused person and pointed him out to the police as the person who stole his phone whereupon accused person was arrested. According to PW1, the accused person alleged to the police in his presence that he took the phone but gave it to a person called Evans Amoako to unlock it for him. The said Evans Amoako also appeared at the police station and the accused person pointed him out to the police as the person to whom he gave the phone. Thereafter the police retrieved a phone from Evans Amoako which PW1 identified as his stolen phone. While cross-examining PW1, the accused person basically admitted taking the phone but his contention was that when he was taking it PW1 was not there while PW1 insisted that he was there but only asleep.

PW2 tendered in evidence, among other things, the investigation cautioned statement of the accused person as Exhibit A. The accused person did not challenge the caution statement but rather stated that it was correct. In the said statement, the accused person stated that he took the phone from a seat in the mosque and ended up giving it to Evans Amoako to unlock after which he did not see Evans again to collect the phone even though Evans sent him Ghc 40.00 as a sign of good faith that he will return the phone.

The Prosecution closed its case and the court ruled that a prime facie case had been made against the accused person.

The case of the Accused person

The law per sections 11(3) and 13(2) of the Evidence Act is that when the burden of proof shifts to the accused person, all he has to do is to produce evidence to raise reasonable doubt about the case made against him. In **Republic v. Eugene Baffoe Bonnie & 5 Others** Suit No. CR/904/2017, dated 12 May 2020, Kyei Baffour JA sitting as an additional High Court Judge, at page 6 of the unreported judgement held that:

> *"Accused however is not under any obligation to prove his innocence as the burden of proof is on the prosecution throughout the trial. All that an accused is required to do when invited to open his defence is to raise reasonable doubt regarding his guilt. It is only when the defence raised is not reasonably probable that an accused would be convicted"*

The accused person chose to give his evidence on oath and chose not to call any witnesses. The accused person's evidence was that on the day in question, he went to the mosque to worship but when he got there, in particular to where they wash their hands, he saw a phone there and as no one was around, he picked it and took it home. He later gave it to Evans Amoako but did not see him again till he saw him at the Police station when he was arrested in connection with another case. Under cross-examination the accused person admitted taking the phone but indicated that he did not intend to steal it as he took it when no one was around and he was later even looking for the complainant PW1 when he heard he was searching for his phone.

Evaluation of the evidence

The accused person's statements right from the time he began cross-examining the complainant PW1 through to his evidence-in-chief were that he took the phone from the mosque and that at the time he took it, nobody was around. He seemed to be thinking that if he said he took it when no one was around it would not amount to stealing and that it would only be stealing if he took it while PW1 was around. The relevant facts that have been established from the evidence are that on 10th May 2022, the accused person herein, took a Techno Pouvoir mobile phone belonging to the complainant PW1 without his consent. In other words, the phone he took was not for him. He took it without authorisation and from the turn of events it is clear that he took it with intention not to return it to the owner thus amounting to dishonest appropriation. Taylor JSC stated in **Anang vs. The Republic [198486] 1 GLR 458**, that:

"… to sustain a conviction for stealing there must be an act of the accused of such a nature as to cast a slur on his character revealing him as a person lacking in integrity or as a plainly dishonest person to use the language of section 125 of Act 29."

I am satisfied that that element of dishonesty has also been proved. The accused person's story is not reasonably probable.

Conclusion and sentencing

I hold that all the ingredients of the offence of stealing were established beyond reasonable doubt and the accused person was unable to raise any reasonable doubt about the case made against him. I find the accused person guilty of the offence of stealing contrary to section 124(1) of Act 29, and accordingly convict him of same.

I have considered the accused person's plea for leniency and the Prosecutor's prayer for a deterrent sentence considering that he is known. The court notes that the accused person was the subject of another case before this court, that is Republic v. Abdul Shakuu Yawuza @ Makaveli & Another with suit number CC 304/2022, in which the accused person pleaded guilty to unlawful entry and stealing of a TV set valued at Ghc 900.00 and was convicted accordingly on 18th October 2022. Following the Court's request taking into consideration the accused person's age of 19 years, the Department of Social Welfare wrote that they could not trace the accused person's family to enable them prepare a Social Enquiry Report. Considering that the accused person's family cannot be traced for a Social Enquiry Report to be prepared, the court will proceed to pass sentence.

The Accused person despite being a repeat offender and deserving of an enhanced sentence per the requirements of section 300 of Act 30, is still a young offender. He has also been in lawful custody for over four (4) months already. I have taken into consideration the constitutional requirement in article 14.6 of the 1992 Constitution, to take account of periods that an accused person has spent in lawful custody in sentencing. I sentence him to six (6) months detention at the Senior Correctional Centre in Accra or any other Senior Correctional Centre in the country, pursuant to section 46(3) of the Juvenile Justice Act 2003, Act 653.

HH FREDERICK K. TWUMASI
CIRCUIT COURT JUDGE
OFFINSO