

IN THE CIRCUIT COURT '1', ADENTAN, ACCRA, BEFORE HER HONOUR JUDGE  
DORA G. A. INKUMSAH ESHUN (MRS.) SITTING ON THURSDAY THE 27<sup>th</sup> DAY  
OF OCTOBER 2022

SUIT NO: CC/019/2022

THE REPUBLIC

V.

1. HAVILAH CAPTAIN MANASSEH
2. FRANK ORAKPOSIM
3. EMMANUEL FRIMPONG

VERDICT

On 26<sup>th</sup> July 2022, the accused persons were arraigned in court on the following charges: unlawful entry contrary to **section 152 of the Criminal and Other Offences Act, 1960 (Act 29)**, stealing contrary to **section 124(1) of Act 29** and two counts of dishonestly receiving contrary to **section 147 of Act 29**.

In Count 1, The first accused person (A1) was charged with unlawful entry into Pascal Abdulai Mohammed (the complainant)'s offices to steal. In Count 2, A1 was charged with stealing three Lenovo Thinkpad laptops, three Dell laptops, one Vizio laptop, one Asus laptop, one Samsung cell phone, one 43" Smart Nasco TV, four personal data applicators (PDAs), one internet modem and one Sony Ericsson cell phone valued at GH¢152,000 – all belonging to the complainant.

A1 pleaded "*Guilty with explanation*" to the charges of unlawful entry and stealing. After hearing his explanation on the charge of unlawful entry, a plea of "*guilty*" was entered for him. On the charge of stealing, the accused gave the following explanation, "*My lord, wetin I take, e be 7 laptops, 1 TV and 3 tracking device – that be all. Thank you*". He denied taking the internet modem, one laptop, one PDA or the mobile phones. A plea of "*Not guilty*" was entered for A1 on Count 2.

A2 and A3 pleaded “*not guilty*” to the charges of dishonestly receiving and were granted bail in the amount of GH¢50,000 with two sureties each, who should be known to the police, to be justified by statutory declaration. A1 was remanded into police custody and A2 and A3 were ordered to report to the investigator at the Agbogba Police Station once a week.

The prosecution withdrew the charge of dishonestly receiving against A2 on 8<sup>th</sup> August 2022 after the Nasco TV was returned and A2 was discharged. The prosecution then withdrew the charge of dishonestly receiving against A3 on September 14, 2022, and A3 was discharged.

After case management, the prosecution opened their case with three witnesses,

1. Pascal Abdulai Mohammed (PW1), the complainant,
2. Det. Cpl Fiifi Mac-Aggrey (PW2), the investigator, and
3. Eric Tornyo (PW3) a recruitment officer for Hintel Security Company Ltd.

The investigator tendered the following documents in evidence:

1. Investigation caution statement of A1, dated 22<sup>nd</sup> July 2022 (Exhibit A),
2. Charged caution statement of A2, dated 25<sup>th</sup> July 2022 (Exhibit B),
3. Investigation caution statement of A2 dated 22<sup>nd</sup> July 2022 – struck out on August 15, 2022,
4. Charged caution statement of A2, dated 25<sup>th</sup> July 2022 (Exhibit B) – struck out on August 15, 2022,
5. Investigation caution statement of A3, dated 25<sup>th</sup> July 2022 (Exhibit C),
6. Charged caution statement of A3, dated 25<sup>th</sup> July 2022 (Exhibit D),
7. Picture of Sony Ericsson Xperia phone (Exhibit E),
8. Picture of Data Logic PDA (Exhibit F), and
9. Picture of Nasco television box (exhibit G).

The accused person gave his evidence without any witnesses.

The issue the court must resolve is whether the accused person raised a reasonable doubt that he took all the items he was charged with dishonestly appropriating. A person who steals commits a second-degree felony [section 124(1) of Act 29]. Stealing is defined as the dishonest appropriation of a thing of which the accused person is not the owner [section 125 of Act 29, Republic v. Halm & Another [1969] CC 155, CA].

The complainant (PW1) testified in his witness statement that he is an IT consultant. The accused was stationed as a night security guard at his company from 8<sup>th</sup> July 2022, pursuant to a request to Hintel Security Company. On 18<sup>th</sup> July 2022 at 8:50 pm, PW1 left the facility, leaving the office keys with A1. At 10 pm he rushed back after several calls to the accused were not responded to. On his return, A1 was absent and checks revealed that he had unlawfully entered the offices and stolen:

- 3 Lenovo Thinkpad Laptops valued at GH¢3,600,
- 3 Dell Laptops valued at GH¢3,600,
- 1 Vizio Laptop valued at GH¢1,500,
- 1 Asus Laptop valued at GH¢1,500,
- 1 Samsung cell phone valued at GH¢850,
- 4 Personal Data Applicator's valued at GH¢128,000,
- 1 43-inch Nasco Smart TV valued at GH¢2,400,
- 1 modem valued at GH¢250, and
- 1 Sony Ericsson cell phone valued at GH¢500.

PW1 reported the incident to the managers of Hintel Security Company and the Agbogba police. On 21<sup>st</sup> July 2022, Eric Tornyoy, a recruitment personnel of Hintel Security Company, called PW1 to inform him that he had arrested A1 at Wenchi in the Bono Region and handed him over to the Wenchi Police. PW1 went to the Wenchi Police Station with the Accra police, where A1 admitted to the offences of unlawful entry and stealing. On 22<sup>nd</sup> July 2022, PW1 and the police brought A1 to the Ayi Mensah Police District Headquarters. On 25<sup>th</sup> July 2022, A1 led the police to Kwame Nkrumah Circle where A2 and A3 were arrested for buying some of the stolen items. That day, the police retrieved the 43-inch Nasco Smart TV and one Personal Data Applicator from A2 and A3 which PW1 identified as part of the stolen items. This testimony was corroborated by the investigator, Detective

Corporal Fiifi Mac-Aggrey (PW2), stationed at Agbogba Police Station, who testified that PW1 made the report about the stolen items on 19<sup>th</sup> July 2022 at 7:10 am.

Initially in cross-examination, A1 stated that he would admit to everything because of the length of time he had spent on remand. When he was informed that he would not have another opportunity to cross-examine PW1, A1 put it to PW1 that since he began cleaning the offices, there have been six staff in the office including PW1 – therefore there are seven laptops. There are also four PDA's. He overheard the police say at the station that there was one PDA left in the office which confirmed that he only took three, and not four as PW1 stated. PW1 insisted that A1 took eight laptops. He admitted he has six staff and testified that A1 took six laptops being used by the staff from two offices, a staff member's personal laptop that he brought to the office and his own laptop.

PW1 testified that A1 took the Samsung cell phone belonging to the marketing team and the Sony Ericsson cell phone belonging to his staff, however, the accused denied taking the Samsung cell phone. The Sony Ericsson cell phone was found on the accused when he was arrested and presented to the court as part of the items retrieved. PW1 alleged the accused also took his personal safety boots which he was still wearing in court. A1 did not cross-examine PW2.

Mr Eric Tornyo (PW3), a recruitment officer at Hintel Security Company, testified that at 11 pm on 19<sup>th</sup> July 2022, PW1 called to inform him that A1 had unlawfully entered his office and stolen the items listed on the charge sheet. He decided to look for A1 and had information on 21<sup>st</sup> July 2022 that A1 was hiding in a hotel in Wenchi. He personally arrested the accused personal with the help of local security personnel at the hotel that day and handed him over to the Wenchi police. On 22<sup>nd</sup> July 2022, the accused was brought to the Ayi Mensah Police Station by the Ayi Mensah police, PW1 and PW3, where he was detained.

In cross-examination, A1 asked how PW3 knew he took all the things listed in the charge sheet. According to PW3, A1 called him and told him he had stopped work and was going to a new place. PW3 was told where A1 was posted, because he was the recruitment officer

and PW1 called to tell him A1 took the items from his premises. A1 then put it to PW1 that when he started work with the security company, he paid GH¢100 to join them. After 5 or 7 days, when he requested a feeding fee of GH¢50, PW3 gave him his number to call him when he got to his place. A1 called PW3 several times but got no response. He continued to work without money to feed himself while his colleagues were owed 2-months pay. PW3 said A1 had worked for barely a month after he started. A1 countered that he started work on the 11<sup>th</sup> and stopped on the 8<sup>th</sup>, making his working period one month. At the end of the month, on 8<sup>th</sup> July, one Mr. Manasseh called him to say he wanted to employ him, so he took his pay and left the company. When PW3 testified that A1 had not completed a month and he told him he would work on his pay, A1 said he called the director who informed him that he had paid all his workers including A1, after his new supervisor gave him the director's number.

At the close of the prosecution's case, the court, after considering the evidence and the law, determined that the prosecution had made out a case against A1 on the charge of stealing contrary to **section 124(1) of Act 29** pursuant to section 174(1) of the **Criminal and Other Offences Procedure Act, 1960 (Act 30)** [*Sarpong v. The Republic* [1981] GLR 790].

In *Hausa v. The Republic* [1981] GLR 840 it was held that "...even where the trial court believes the prosecution witnesses it should still go on to consider the accused's version to see if it is true or, short of being true, it is nevertheless reasonably probable, having regard to the whole evidence adduced". In *Lutterodt v. COP* [1963] 2 GLR 429 it was also held that, "...where the defence has succeeded in raising grave issues under cross-examination, it is improper for a trial court to hasten anything that would inure to muzzle the accused's version of the issues raised".

In his written witness statement, A1 admitted he unlawfully took PW1's items but said it was not his intention and he did not take all the items listed in the charge sheet. He admitted taking seven laptops, three PDA devices, one 43-inch television and a small Sony Ericson phone he was not aware was in the bag. He challenged the prices of the stolen items listed by PW1 and asked for an invoice for all of them. A1 testified that he took the items because PW1 called his supervisor to ask him to change A1 because he could no

longer work for him. A1 thought that if he moved away from PW1's office, he would have nowhere to go.

A1 stuck to his story about the number of items he took from PW1's office in cross-examination. The prosecution stated that two of the PDA's had been retrieved with the Nasco TV, reducing the value of the items stolen to GH¢75,000.

The court finds the A1's evidence about the number of items he took from PW1's office credible – as he was quite frank, open and honest about his actions on the material date. A1, from the evidence, did commit the offences of unlawful entry and stealing.

In **section 177(1) of the Criminal and Other Offences Procedure Act, 1960 (Act 30)**,

*“The court, having heard the totality of the evidence shall consider and determine the whole matter and may,*

*(a) convict the accused and pass sentence on, or make an order against the accused according to law, or*

*(b) acquit the accused, and the Court shall give its decision in the form of an oral judgment,*

*and shall record the decision briefly together with the reasons for it, where necessary.”*

[Comfort and Another v. The Republic [1974] 2 GLR 1].

In passing sentence on A1, the court must consider the nature of the offences and the **Sentencing Guidelines**. Both the offences of unlawful entry and stealing are second degree felonies in **sections 152 and 124(1) of Act 29**.

While considering sentencing, the prosecutor submitted that none of the laptops were retrieved. The police retrieved one PDA while PW1, A2 and A3 came to an agreement on the second PDA. A check online on the complainant's phone revealed that each PDA cost \$1,400. At the time the offence occurred, the dollar was estimated to be about GH¢7.8 or 7.9 to \$1. This would bring the cost of the estimated items the A1 admits to stealing that were retrieved to:

1. 1 PDA @ \$1,400 x 7.9 = GH¢11,060.

2. 7 laptops:

3Lenovo laptops – GH¢3,600

3Dell laptops - GH¢3,600

Average of Asus & Vizio laptop =  $(11,500 + 1,500) / 2 = \text{GH¢}6,500$ .

Total value of items A1 admits to stealing but not retrieved = GH¢24,760.

The value of the stolen property is therefore – 2,063.33 penalty units. The fact that A1 committed two offences while he was in a position of trust are aggravating factors. Mitigating factors in the case include the fact that the offences were opportunistic and committed out of necessity, while some of the items were recovered in good condition. This brings the Sentence Level to C (non-custodial (1 day) – 5 years.

A1 stated the following about his circumstances; he is not married and has no children. He has four brothers and sisters in Lagos and his parents are separated and live in Lagos. He sends money to 20-year-old sister occasionally. A1 is 26 years-old and has never been in trouble with the police. He wants to stay in Ghana. He said, *“This will be my first and last”*. The Sentence Level determined by the Court is Mid–C.

After considering the evidence, law, and Sentencing Guidelines, the first accused person, Havilah Captain Manasseh, is convicted on his own *“guilty”* plea of the offence of unlawful entry into the offices of Mr. Pascal Abdulai Mohammed with the intention to steal and is sentenced to serve a term of 3 months at the Nsawam Medium Security Prison in hard labour.

Mr. Havilah Captain Manasseh is also convicted of the offence of stealing six laptop computers, three PDAs, one Nasco 43” television and one small Sony Ericsson phone belonging to Mr. Pascal Abdulai Mohammed, and is sentenced to a prison term of 6 months at the Nsawam Medium Security prison in hard labour.

The sentences shall run concurrently. The accused person shall be enrolled in a work program while in prison. The Commander of the Agbogba Police Station shall release the retrieved items to Mr. Pascal Abdulai Mohammed forthwith.

**(SGD)**

**DORA G. A. INKUMSAH ESHUN  
CIRCUIT JUDGE**



