

IN THE CIRCUIT COURT HELD IN ASHAIMAN ON MONDAY THE
7TH DAY OF NOVEMBER 2022, BEFORE HIS HONOUR SIMON
GAGA, ESQ., CIRCUIT COURT JUDGE

CC. 44/2023

THE REPUBLIC

VRS

ALHASSAN ABDUL RAZAK

**RULING ON A POINT OF LAW RAISED BY COUNSEL FOR
ACCUSED PERSON**

On the 3rd day of November, 2022, the accused person herein was arraigned before this Court on the charge of Stealing, Contrary to Section 124 (1) of Act 29/60.

The facts which accompanied the offence are as follows;

Complainant, Ackah Harrison Ebenezer, aged 18, is an Electrician and resides at Spintex, Accra; whilst accused person, Alhassan Abdul Razak, aged 27, a scrap dealer and resides at Fitter line, Ashaiman.

On the 3rd day of September, 2022, complainant together with his friends from Spintex came to Ashaiman for the program “Ashaiman to the world” organized by Stonebwoy and other musicians. At about 11:30pm the same day, the complainant and his friends on reaching where the program was, saw the crowd and decided to move to where the security officers mounted their barrier as a safe place for them.

On reaching the place, they found out that their friend Teye was not amongst them. Complainant’s friend Daniel gave his Iphone 7 plus valued GH¢2,000.00 to him to use as flashlight to direct Teye to their location.

Complainant passed through the crowd to where Daniel said he was standing but could not find him at the place. A few minutes later, Teye called on Daniel's line and when Complainant decided to pick the call a group of young men numbering about 20 attacked and snatched the said Iphone 7 plus from him and they bolted with it.

Police upon intelligence found out that accused person and others were attacking people in the cause of the program. Police acting on the intelligence followed up and arrested accused person at his shop at Fitter line, Ashaiman. A search was immediately conducted on him and the following exhibits were found on him: Tecno Pop2 mobile phone, Oppo mobile phone, Tecno T474 mobile phone, Nokia TA116 mobile phone, Iphone 7 plus mobile phones (2), Redmi mobile phone, Iphone 6, Infinix S mobile phone and Itel keypad mobile phone.

At the Police station, one Iphone 7 plus amongst the accused person's exhibits rung and when the Police spoke to the caller, he identified himself as the complainant and that the said mobile phone belonged to him. Complainant was invited at the station and he identified the said Iphone 7 plus mobile phone and used the password to open as his friend Daniel's phone, which was snatched at the program. Accused person was asked how he got the phone but could not give any tangible explanation.

Before the charge was read to the accused person for his plea to be taken, Counsel for the accused informed the Court that he has a preliminary objection to the charge on point of law.

SUBMISSION BY COUNSEL FOR ACCUSED

In his submission, Counsel referred the Court to *Section 112(1) of the Criminal Procedure Act, Act 30 of 1960*, which states as follows;

"subject to the special rules as to indictments mentioned in this section, a charge, complaint, summons, warrants or any other document laid, issued

or made for the purpose of or in connection with proceedings before a Court for an offence, shall be sufficient if it contains a statement of the offence with what the accused person is charged, together with the particulars necessary for giving reasonable information as to the nature of the charge and although there may be a rule of law to the contrary, it shall not be necessary for it to contain any further particulars other than necessary particulars."

Counsel said that he prays the Court to strike out certain offending portions in the brief fact in support of the charge sheet. According to Counsel, the accused has been charged for stealing Iphone 7 plus mobile phone valued at GH¢2,000.00. By the brief facts, the Police conducted a search on the accused and found the following items

1. Tecno pop2 mobile phone
2. Oppo mobile phone
3. Tecno T474 mobile phone
4. Nokia TA116 mobile phone
5. Iphone 7 plus mobile phones (2)
6. Redmi mobile phone
7. Iphone 6
8. Infinix S mobile phone
9. Itel keypad mobile phone

Apart from Iphone 7 plus phone, the rest of the items are not mentioned in the particulars of the offence. The facts, if allowed to stay are to prejudice the mind of the Court.

Counsel further submitted that the brief facts also stated that the accused person and other persons attacked some people. However, the accused is not charged by the Police for an act of assault on any person. He however stated that these facts have sinned against *Section 112(1) of Act 30/60*. He therefore prayed the Court to direct the Prosecution to strike out those offending portions from the brief facts, of the case. According to Counsel, they violate the constitutional right of the accused to fair trial.

THE CASE OF PROSECUTION

Prosecution in his submission averred that after the Police arrested the accused, they retrieved all the items mentioned in the brief facts from him. It is only the Iphone 7 plus that the complainant has come forward claiming ownership of it.

According to the Prosecution, people are yet to come forward to collect the rest so that the accused can be charged in respect of the other phones. More so, when it comes for the Prosecution to file disclosures, all these issues will come up before the Court.

ANALYSIS OF THE OFFENCE

The accused person is charged for Stealing, Contrary to Section 124(1) of Act 29/60. This section states as follows;

“A person who steals commits a second-degree felony.”

Also, Section 125 of Act 29/60 defines stealing as follows;

“A person steals, who dishonestly appropriates a thing of which that person is not the owner.”

By the particulars of the offence, the accused has dishonestly appropriated Iphone 7 plus mobile phone. The accused is therefore properly charged under the offence.

However, do the brief facts support the charge? Counsel in his submission stated that there are some of the issues in the brief facts, which are not used to charge the accused; hence, the plea of the accused should not be taken until the offending particulars are taken off by the Prosecution since they violate the accused person’s constitutional right to fair trial. He, however, referred the Court to *Section 112(1) of Act 30*.

The Prosecution mentioned eight (8) different phones in the facts and only used one phone to charge the accused. The Prosecution also talked of the accused and other people attacking people but failed to use that to charge the accused.

Prosecution on the other hand also averred that it is only one phone that someone has claimed ownership and the rest of the phones are with the Police awaiting identification by their owners.

A closer look at Section 112(1) of Act 30 that Counsel referred the Court to has not stated anywhere that where the issues raised in the brief facts are not part of the particulars of the offence same should be struck out.

See the case of *Obeng alias Donkor & Others vrs The State (1966) GLR 259 SC*. In that case, the appellant was charged with Stealing a total sum of £G321,919 but the Prosecution was able to prove that he stole only £G315. The Supreme Court held among others that where a person is charged with stealing a certain sum it is sufficient if the Prosecution proves that the suspect stole part of the sum.

This judgment can be likened to the instant case. In the instant case, even though judgment has not been delivered, the Prosecution has mentioned eight different phones that were allegedly stolen by the accused but only one was mentioned in the particulars. The onus is therefore on the Prosecution to prove as to whether the accused stole any of the phones and not necessarily all the phones.

I therefore find it difficult to agree with Counsel that the Prosecution should be ordered to expunge some portions from the facts. Also, with regard to the accused attacking people which is not captured in the facts, it is for the Prosecution to prove his case. If the Prosecution fails to prove the case, it enures to the benefit of the accused.

The application is therefore refused.

(SGD) (H/H) SIMON GAGA
(CIRCUIT COURT JUDGE)

1. PROSECUTOR – C/INSP. SAMUEL APERWEH.
2. COUNSEL FOR ACCUSED – OLIVER BARKER-VORMAWOR.

OAAQ/.