

IN THE CIRCUIT COURT HELD AT ACHIMOTA, ACCRA ON
THURSDAY, THE 11TH DAY OF MAY, 2023 BEFORE HER HONOUR
AKOSUA ANOKYEWAA ADJEPONG (MRS.), CIRCUIT COURT
JUDGE

CASE NO.: D3/001/23

THE REPUBLIC

VRS

- 1. YUSSIF AHMED**
- 2. ONE OTHER AT LARGE**

ACCUSED PERSON PRESENT

A.S.P. STEPHEN AHIALE FOR THE REPUBLIC PRESENT

NO LEGAL REPRESENTATION FOR THE ACCUSED PERSON

JUDGMENT

The accused person was charged and arraigned before this Court on 9th March, 2023 on the following charges;

1. Unlawful Entry, contrary to **section 152** of the Criminal Offences Act, 1960 (Act 29),
2. Stealing, contrary to **section 124(1)** of the Criminal Offences Act, 1960 (Act 29),

3. Causing Unlawful Harm, contrary to **section 69** of the Criminal Offences Act, 1960 (Act 29).

He pleaded not guilty to the charges after same had been read and explained to him in Ga, being his language choice. The accused person having pleaded not guilty to the charges, the prosecution assumed the burden to prove the guilt of the accused person beyond reasonable doubt.

The facts of the case as presented by the prosecution are that the complainant, Liberty Obeng is a trader and resides at Darkuman whilst accused person Yussif Ahmed is a sales boy and lives at Fadama. On 2nd of March, at about 01:40am complainant was sleeping in his room when accused person and one other now at large, entered into the complainant's room and made away with a cash sum of GH¢1,680.00 and a Samsung mobile phone valued at GH¢800.00. Before they could make away with the booty, the complainant woke up and to his dismay, found out that the music in his mobile phone had stopped. There the complainant saw the accused person in his room and before he could question him, he made an attempt to run away. The complainant pursued him and in the process a struggle ensued between them and the accused person pulled a pair of scissors and stabbed the complainant's chin with it. All this while the accused accomplice had bolted with the booty. As they were still struggling the noise attracted the Darkuman police patrol team and they quickly proceeded to the scene and managed to rescue the complainant. The patrol team escorted both parties to the station due to the injuries on

them. Police later visited the scene and saw two phones which belong to the accused person and same was brought to the station to assist investigation. After police investigation accused was charged and put before this honourable court.

To discharge their legal burden, the prosecution called two (2) witnesses including the investigator.

Evidence of PW1

PW1 who is also the complainant told the Court in his evidence that he is a trader and resides at Darkuman, a suburb of Accra. That on the day in question, he was asleep and suddenly woke up to realize that the accused person together with his accomplice currently on the run standing in his room. That they started to run immediately they became aware that he had woken up from sleep. According to PW1, he quickly grabbed the accused person and a struggle ensued between them whilst the accomplice of the accused person took to his heels and fled. That the accused person in the course of struggle, pulled a pair of scissors and stabbed him in his chin; and he sustained severe injury with blood oozing out. That he managed to put up a good resistance from his attacks and realized that the accused person has also sustained injury. That the police patrol team came to his rescue and arrested the accused person. PW1 continued that he was subsequently rushed to Kaneshie Polyclinic for treatment and thereafter came home only to find that his cash sum of GH¢1,500.00 kept in a book and another GH¢180.00 kept in a fridge were missing. That further checks in his room

revealed that his Samsung mobile phone valued GH¢800.00 was also missing. That he saw two small mobile phones on the floor and they do not belong to him. PW1 tendered in evidence police medical form as exhibit 'A'.

Evidence of PW2

PW2, the investigator herein told the court that on 3rd March 2023 at about 2:40am, whilst in the office as available investigator on duty, the complainant assisted by the Darkuman night patrol team with a cut in his chin with blood oozing from it, came to the station having arrested accused and reported that same day at about 1:40am, he was sleeping in his room when accused person and one other at large entered his room and stole his Samsung mobile phone valued at GH¢800.00 and a cash sum of GH¢1,680.00. That the accused person also stabbed him in the chin with a pair of scissors and caused a dislocation in his shoulder. That investigation caution statement and charge statement were obtained from the accused person. According to PW2, she visited the crime scene and her investigation revealed what the complainant reported at the police station. PW2 tendered the investigation caution statement and charge statement of the accused person as exhibits 'B' and 'C' respectively. She also tendered the said scissors and mobile phones as exhibits 'D', 'E' and 'F' respectively.

Thereafter, the prosecution closed its case.

After the close of the case of prosecution, the Court examined the evidence of the prosecution witnesses to determine whether a prima facie case had been made by the prosecution to warrant the accused person to open his

defence. The Court then ruled that a prima facie case had been made and the accused person was to raise a reasonable doubt in the case of the prosecution.

In view of the above, the Court found that the accused person had a case to answer and was therefore called upon to enter into his defence, after the options available to him as an accused person were explained to him. The accused person informed the court that he had nothing to say.

The accused person did not also call a witness.

The legal issue to be determined by this court is whether or not the accused person committed the offences he has been charged with.

A fundamental principle of our criminal justice system is that a person accused of a crime is presumed innocent until he has pleaded guilty or proven guilty. It is trite learning that in criminal cases, the prosecution bears the burden to prove the guilt of the accused person beyond reasonable doubt.

See **sections 11(2), 13(1) and 15** of the Evidence Act, 1975, (NRCD 323).

In the case of **Gligah & Attiso v. The Republic [2010] SCGLR 870**, the Supreme Court held in holding one as follows;

“Under article 19 (2) (c) of the 1992 constitution, everyone charged with a criminal offence was presumed innocent until the contrary is proved. In other words, whenever an accused person was arraigned

before any court in any criminal trial, it was the duty of the prosecution to prove the essential ingredients of the offence charged against the accused person beyond reasonable doubt. The burden of proof was therefore on the prosecution and it was only after a prima facie case had been established by the prosecution that the accused person would be called upon to give his side of the story.”

The burden on the accused person, when called upon to enter his defence, is to raise a reasonable doubt in the case of the prosecution. The standard of proof for the defence is proof on a balance of probabilities.

In the case of **Osae v. The Republic [1980] GLR 446**, the court held in its holding 2 that:

“although it was settled law that where the law cast the onus of proof on the accused, the burden on him was lighter than on the prosecutor, and the standard of proof required was the balance of probability, if at any time of the trial, the accused voluntarily assumed the onus of proving his defence or some facts as happened in this case, the standard he had to discharge was on a balance of probabilities.”

Before examining the evidence given at the trial it is essential to set out the provisions of **Act 29** under which the accused person has been charged.

Section 152 of Act 29 on unlawful entry provides that:

“Whoever unlawfully enters any building with the intention of committing crime therein shall be guilty of second degree felony.”

The elements of the offence of unlawful entry are contained in **section 153 of Act 29** and it reads as follows:

“A person unlawfully enters a building if he enters otherwise than in his own right or by the consent of some other person able to give such consent for the purposes for which he enters.”

Section 124(1) of Act 29 provides that:

“Whoever steals shall be guilty of a second degree felony.”

Section 125 of Act 29 defines Stealing as follows:

“A person steals if he dishonestly appropriates a thing of which he is not the owner”.

In the case of **Brobby & Others v The Republic [1982-83] GLR 608-616**, Twumasi J. stated as follows:

“Three essential elements of the offence of stealing become obvious and they are:

- 1. That the person charged must have appropriated the thing allegedly stolen.*
- 2. That the appropriation must have been dishonest.*
- 3. That the person charged must not be the owner of the thing allegedly stolen.”*

It is clear from the definition that a person cannot be guilty of stealing unless he is proved to have appropriated a thing in the first place.

Section 122 (2) of Act 29 defines Appropriation as follows:

“An appropriation of a thing in any other case means any moving, taking, obtaining, carrying away, or dealing with a thing, with the intent that some person may be deprived of the benefit of his ownership, or of the benefit of his right or interest in the thing, or in its value or proceeds, or any part thereof”.

Section 69 of Act 29 on Causing Harm, provides as follows:

“Whoever intentionally and unlawfully causes harm to any person shall be guilty of second degree felony.”

Section 76 of Act 29 defines Unlawful Harm as follows:

“Harm is unlawful which is intentionally or negligently caused without any of the justification mentioned in Chapter I of this Part.”

Section 31 of Act 29 is the chapter 1 mentioned under section 76 being grounds on which harm may be justified and it provides as follows:

“Force may be justified in the cases and manner, subject to the conditions, hereinafter in this Chapter mentioned, on the ground of any of the following matters, namely—(a) express authority given by an enactment; or (b) authority to execute the lawful sentence or

order of a Court; or (c) the authority of an officer to keep the peace or of a Court to preserve order; or (d) authority to arrest and detain for felony; or (e) authority to arrest, detain, or search a person otherwise than for felony; or (f) necessity for prevention of or defence against crime; or (g) necessity for defence of property or possession or for overcoming the obstruction to the exercise of lawful rights; or (h) necessity for preserving order on board a vessel; or (i) authority to correct a child, servant, or other similar person, for misconduct; or (j) the consent of the person against whom the force is used.”

From the above, it is incumbent on the prosecution to show that the accused person committed the above offences by proving the above ingredients beyond reasonable doubt.

After a careful examination of the evidence led at the trial, I made the following findings of facts and observations:

PW1 in his evidence in chief and under cross examination maintained that he saw the accused person with his accomplice who is currently on the run, standing in his room. That when they saw him they started to run so he was able to hold the accused person and the other one run away. According to PW1, a struggle ensued between him and the accused person and in the course of that, the accused person pulled a pair of scissors and stabbed him in his chin where he was severely injured. He told the court that when he returned home from the Kaneshie Polyclinic for treatment, he found out

that his cash sum of GH¢1,680.00 and his Samsung mobile phone worth GH¢800.00 were missing.

PW2 in her testimony told the court that the complainant who had a cut in his chin with blood oozing from it reported to the police station with the assistance of the Darkuman night patrol team and having arrested the accused person. She further recounted what her investigations at the crime scene revealed and it corroborated the evidence of PW1.

The accused person denied the charges against him and also stated that he has not been to the complainant's place.

On count one, PW1 maintained under cross examination that he saw the accused person in his room when he woke up from sleep. At this stage, it is the word of PW1 against the accused person's word since from the evidence by the prosecution witnesses, PW1 is the only one that saw the accused person in his room or premises.

In the case of **Ameshinu v. The Republic [2010] 34 MLRG 207 @ 215**, the Court of Appeal per Apaloo J.A held that:

"Where the identity is in issue, there can be no better proof of the identity than the evidence of a witness who swears to have seen the accused person committing the offence charged." Reference is also made to **Regina v. Christie (1914) AC 545** per Viscount Haldane, L.C.

From the evidence of PW1 he personally saw the accused person and his accomplice in his room and when they realized he had woken up from his

sleep and seen them, started to run but he chased them and was able to grab the accused person on his corridor whilst his accomplice run away.

PW1 told the court in his evidence that when he returned home after being treated in the hospital, he saw two small phones on the floor and they do not belong to him. When the investigator sought to tender in evidence the said scissors and two mobiles phones found at the crime scene, the court asked the accused person if he had any objection and his response was that the scissors is not his but the phones are his. Interestingly the accused person admitted that the mobile phones that were found together with the scissors at the crime scene were his but denied ownership of the said pair of scissors.

From the evidence before this court, particularly in the caution and charge statements of the accused person, the accused person stated that at about 4:00am he had gone to the bush near cable and wireless to pick up his girlfriend Ama, and they were on their way to his house at Fadama. That on their way he stood somewhere to urinate and his girlfriend left him and entered into a corner so he followed her into the corner when some men numbering more than three attacked him and started beating him that he had come to steal from them.

This same accused person when he was cross examining the complainant, stated that on that day he was walking with a lady and on their way, the lady dodged him so in his quest to find her, he ended up in the complainant's corridor only to be attacked by the complainant.

The accused person did not give evidence as he told the court that he had nothing to say when he was asked to enter into his defence. From the evidence adduced by the prosecution witnesses and the accused person's own questioning of PW1, it is not in doubt that the accused person was in the premises of the complainant at that odd hour and he could not give any tangible reason for being on the premises of the complainant at that ungodly hour.

The admission of ownership of the two mobile phones found at the crime scene by the accused person and his questioning of the complainant about him being in the complainant's corridor, buttresses the fact that the accused person unlawfully entered the premises of the complainant at that odd time.

In view of the evidence before this court, I find that the prosecution has been able to prove beyond reasonable doubt that the accused person unlawfully entered the premises of the complainant.

On count two being the charge of stealing, the evidence of the prosecution witnesses does not suggest that the accused person was seen appropriating the amount of GH¢1,680.00 and the Samsung mobile phone that the complainant later found out to be missing.

Below is the relevant part of the cross examination of PW1 by accused person on 25th April, 2023.

"Q: When you caught me, did you see me holding something of yours?"

A: *At the time I caught you, you were not holding property of mine."*

From the above, PW1 did not see the accused person holding the said missing money or mobile phone. Hence there is not enough evidence before this court to warrant the conclusion that the accused person dishonestly appropriated the said missing money and mobile phone. The basic element in stealing is that the accused person must have appropriated the thing. This burden, the prosecution could not discharge, as there is not even an iota of evidence before this court to establish that the accused person appropriated the missing money and mobile phone for the court to further determine whether or not the appropriation was dishonest.

None of the prosecution witnesses testified that they saw the accused person taking the said GH¢1,680.00 and Samsung mobile phone. PW1's suspicion cannot be a concrete evidence of stealing because it is trite law that multiple suspicions do not amount to evidence.

The elements of stealing are made very clear in *section 125 of Act 29* that a person is guilty of stealing if he *"dishonestly appropriates a thing of which he is not the owner."* Therefore, if the elements of the offence of stealing are not categorically proven in a criminal case, the accused person cannot be convicted of stealing. As a result, the charge of stealing against the accused person cannot be sustained based on the evidence of the prosecution before this court.

In view of the above, the prosecution was not able to prove the elements of stealing as provided in Act 29. For that reason, the charge of stealing is hereby dismissed.

In relation to count three being the charge of causing harm, PW1 in his evidence told the court that the accused person pulled a pair of scissors and stabbed him in his chin. That he sustained severe injury with blood oozing therefrom.

The accused person having denied the offence, the prosecution had a burden to prove the guilt of the accused person beyond reasonable doubt.

The evidence before this court indicates that the accused person unlawfully entered the premises of the complainant which the accused person did not deny that even though he said he was searching for his girlfriend at that odd time and found himself in the corridor of the complainant. From exhibit 'A' which is the medical officer's report, in the morning of 2nd March, 2023; one Dr. Sarah Ankamaah attended to the complainant herein and the finding of the medical officer indicates that, the complainant was stabbed on his left chin and bleeding and also had mark on his left shoulder.

From the above, there is evidence that the complainant was harmed. To establish that the accused person caused the said harm, PW1 maintained throughout the trial that it is the accused person that caused him harm when he caught him and a struggle ensued between them. PW2 also

tendered the scissors that was found at the crime scene together with two mobile phones. Although the accused person has identified the two mobile phones as his, he said the scissors is not his. The reasonable inference is that given the circumstances exhibits 'D', 'E' and 'F' being the scissors and the said two mobile phones were found, there is no doubt that they are all for the accused person; and the court accepts the evidence of PW1 which is supported by exhibit 'A' that the accused person used the said scissors to cause harm to him.

I therefore find from the evidence before this court that the accused person herein unlawfully entered the complainant's premises and also caused him harm.

In the case of **Commissioner of Police v. Isaac Antwi [1961] GLR 408-412**, it was held that the accused person is not required to prove anything. All that is required of him is to raise a reasonable doubt as to his guilt.

This is further emphasized by **sections 11(3) and 13(2) of the Evidence Act, 1975 (NRCD 323)**. **Section 11(3)** provides that:

"In a criminal action, the burden of producing evidence, when it is on the accused as to a fact the converse of which is essential to guilt, requires the accused to produce sufficient evidence so that on the totality of the evidence a reasonable mind could have a reasonable doubt as to guilt."

Section 13(2) provides that:

“Except as provided in section 15 (c), in a criminal action, the burden of persuasion, when it is on the accused as to a fact the converse of which is essential to guilt, requires only that the accused raise a reasonable doubt as to guilt.”

All that the accused person needed to do was to raise a reasonable doubt in the case of the prosecution but he could not do so. The accused person did not give evidence to attempt to raise a reasonable doubt in the case of the prosecution.

I support my decision with the dictum of Denning J. (as he then was) in the case of **Miller v. Minister of Pensions [1947] 2 All E.R. 372 at p. 373** where he said:

"Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible, but not in the least probable,' the case is proved beyond reasonable doubt, but nothing short of that will suffice."

For the foregoing reasons, I find that the prosecution could not prove the charge of stealing against the accused person beyond reasonable doubt; therefore the accused person is acquitted and discharged on count two. On the other hand, the prosecution has been able to establish beyond reasonable doubt that, indeed the accused person committed the offences

under counts one and three. Consequently, I pronounce the accused person herein guilty on counts one and three being the offences of Unlawful Entry and Causing Harm; and the accused herein is convicted on both counts one and three accordingly.

Q: Any plea in mitigation before sentence is passed?

A: I plead with the court to reduce my punishment since I have someone at home that I am taking care of.

Q: Is the accused person known to the police?

A: No, he is a first time offender.

By Court:

In sentencing the accused person, the court takes into consideration his plea in mitigation, the fact that he is a first time offender, the youthful age of the accused person. In accordance with article 14(6) of the 1992 Constitution, time spent in custody pending trial is considered. The court also takes into consideration the pain and trauma the accused person subjected the complainant to, and to serve as deterrent to the accused person and others in the community, the court sentences the accused person as follows:

Count 1: The accused person is sentenced to serve a term of imprisonment of forty-eight (48) months in hard labour (I.H.L.)

Count 2: The accused person is acquitted and discharged.

Count 3: The accused person is sentenced to serve a term of imprisonment of sixty (60) months in hard labour (I.H.L.). In addition the accused person shall pay a fine of two hundred (200) penalty units. In default of the fine, the accused person shall serve a term of imprisonment of twenty-four (24) months in hard labour (I.H.L.)

The sentences shall run concurrently.

Restitution Order

The accused person is ordered to pay an amount of GH¢1,500.00 to the complainant as compensation for causing harm to him.

Also, the mobile phones which the accused person identified as his, being exhibits 'E' and 'F', Nokia and J-Star phones respectively are ordered to be released to the accused person herein.

**H/H AKOSUA A. ADJEPONG (MRS)
(CIRCUIT COURT JUDGE)**