

**IN THE CIRCUIT COURT '10 OF GHANA, ACCRA, HELD THIS THURSDAY THE 27<sup>TH</sup> DAY OF JULY, 2023 BEFORE HER HONOUR EVELYN E. ASAMOAH (MRS)**

**CASE \_\_\_\_\_ NO.**  
**D4/12/2022**

**THE REPUBLIC**

**V.**

**MOSES TINDANA**

*CHIEF INSPR. BENSON BENNEH FOR THE REPUBLIC*  
*MR. CLETUS AKONAB FOR THE ACCUSED*

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===== **JUDGMENT**

● It is the case of the prosecution that the complainant, inadvertently, left one of his luggage, containing money, at the airport. Mr. Tindana, is accused of dishonestly appropriating the complainant's 7000 Euro and GHC500. The accused was charged with the offence of stealing contrary to section 124 (1) of the Criminal and Other Offences Act, 1960 -Act 29. He pleaded not guilty to the charge.

In the case of **Mantey and Another V. The State [1965] GLR 229-234** Archer J (as he then was) stated:

"In my view, the animus furandi must be proved by the prosecution. Moreover section 125 of the Criminal Code, 1960,5 states that "A person steals if he dishonestly appropriates a thing of which he is not the owner." Then section 120 (2) of the same Act also provides that:

"It is not necessary, in order to constitute a dishonest appropriation of a thing, that the accused person should know who is the owner of the thing, but it suffices if he has reason to know or believe that some other person,

whether certain or uncertain, is interested therein or entitled thereto, whether as owner in his own right, or by operation of law, or in any other manner . . ."

● The facts, presented by prosecution, are as follows: On 25th July 2022, the complainant arrived from Amsterdam at the Kotoka International Airport with personal luggage and among them, a small black bag which contained 7000 Euros and GHC 500. Whilst at the Airport, the complainant forgot the said bag with its contents on one of the trolleys. The accused person who is one of the 'goro boys' always at the Airport spotted the bag on the trolley at night and stole the money in it. A complaint was made to the KIA police station and the police proceeded to the scene of the crime- on enquires. During the investigation, the accused person was seen in CCTV footage at the arrival hall of terminal '3' and he stole the contents in the bag and ceased to come to the Airport until Friday 24th February 2023, when he resurfaced at the terminal and was arrested. Investigation disclosed that the accused on the day of the theft came to the Airport and was loitering around the terminal 3 arrival area dressed in white short sleeves and a pair of trousers and he was there at 10:00 pm when the complainant arrived. After successfully stealing the money, he absconded.

● The complainant recounted the incident as follows: On 25th July 2022 at about 20:27 hours, he arrived at the Airport from Amsterdam and after going through arrival formalities, he came to the waiting square where his son who works at the Airport came and welcomed him. His son took his luggage which was on the trolley to the staff car park. When they got to the house, he realized that one of his bags was left at the car park. They went to the Airport car park where they saw the bag but the GHC 500 and 7000 euros were not in it.

The investigator, PW2, asserted that on 24th February 2023, the Police had a hint that the accused person who absconded last year - 29/07/2022 had returned to the airport. The police proceeded to the Airport and spotted the accused at the said location where he was arrested. The police wanted to search the accused person's house but he took the police to a different location with the excuse that he had no fixed place of abode. The Aviation Security Intelligence Department furnished the police with the CCTV footage of the scene.

● The accused was called upon to open his defence after the court ruled that a prima facie case had been established against him. In his witness statement, the accused contended that he goes to the Airport to help push trolleys and pick leftover food and towels from the waste bin and that on the day of the incident, he was there for that purpose. According to him, he was pushing a trolley when one security personnel approached him and enquired whether he had seen a small bag at the car park. He responded that he had not seen any bag there.

The accused added that after the incident, he went to the Airport for about a week and thereafter he traveled to his hometown due to hardship in Accra. He came back to Accra a few months ago and he was arrested by the police.

● The accused person denied the offence in his caution and charge statements. The prosecution tendered in evidence two video recordings- CCTV footage, where the accused was captured stealing the complainant's money.

### ***Daytime***

On 25th July 2022, the day the incident occurred, the accused was at the Airport during the day. He was seen talking to an immigration

officer who subsequently sacked him from the premises. The accused during cross-examination of the first prosecution witness contended that: *“The only time I saw myself was in the first video where I was leaning against a wall. The immigration officer cautioned me and I left- 03:13:29pm.”*

The accused during cross-examination of the complainant stated: *“I viewed the video. I saw myself but I did not take anything.”*

The accused is not an employee of the Ghana Airport Company and his presence or service was not required hence he was cautioned and sacked from the premises. During the day, he was in white shirt and black trousers. He resurfaced in the evening in the same attire.

### **Nightfall**

The accused during cross-examination of the Investigator admitted that on 25th July 2023, in the evening, he was at the Airport. He asserted that *“in the video or on that said day, I was only seen eating. Where did you see me taking the money? I opened the black rubber to look for more food.”* The accused further added: *“I only pushed one trolley and went away as seen in the video.”*

This evidence reveals that the accused identified himself in the video footage. He was captured eating at the crime scene on the day of the incident. He was seen pushing a trolley around 10: 30 p.m. This further affirms that he was indeed present when the incident occurred.

●The investigator described the scene and recounted the actions of the accused, in the evening, as follows:

*“Earlier in his statement, he said when he came there during the day, the aviation security man warned him and he left. From his confession, it shows that he was at the scene at that time. He said where the trolleys are is a*

*refuse dump. It's not true. That structure opposite the 'No parking'/ trolleys stand where he was is rather the refuse dump. He picked the food from that place and walked towards the trolleys. He was then eating when he saw the complainant's bag on the trolley. That was when he started looking around to see if there was no one around. From the footage, you could see that he tried searching the bag, he heard someone coming from the other end and he pretended to be pushing the trolley to the other side, it was after the person pushing the trolley passed by then the accused took the money in the envelope and left the scene."*

● The video footage, exhibit C, shows that the complainant left his bag on a trolley at the airport close to a structure.

The accused arrived at the scene around 22: 10 p.m., there was no one around at that period. He was then eating, as he indicated. He saw the complainant's bag on the trolley and moved about 3 steps away from it. He returned and touched the bag. He again moved away about 3 steps, came back, and touched it again.

Subsequently, he moved away, returned, and opened the complainant's bag. He searched the bag for about 2 minutes and took items from it. He dropped his food on his left and took out a white item - described by the prosecution witnesses as the envelope that contained the money- out from the bag and held it with his right hand. Upon seeing someone approaching the scene, he put the bag on the floor and pretended to be pushing the trolley, all in a bid to conceal his act.

● In the case of **Lucien V. The Republic** (1977) 1GLR 351, the court held:

*"The only basic ingredients requiring proof in a charge of stealing were that: (i) the person charged must not be the*

*owner of the thing stolen, (ii) he must have appropriated it and (iii) the appropriation must have been dishonest. Consequently, it was unnecessary to prove ownership of the thing stolen and under section 120 (2) of Act 29, the thing, the ownership of which was in dispute or in doubt could properly be the subject-matter of a stealing count..."*

In the case of **Anang v. the Republic (1984-86) 1GLR** page 458, the Court held:

*"Dishonesty in the definition of stealing connoted moral obloquy. To sustain a conviction for stealing there had to be an act of the accused of such a nature as to cast a slur on the character revealing him as a person lacking in integrity..."*

● As indicated, the accused is not an employee of the Ghana Airport Company. On the day of the incident, in the daytime, the security officers sacked him from the premises. However, he went to the Airport in the evening and stole the complainant's property in the hand luggage. The complainant returned to the premises, about thirty minutes, after the incident where he found the bag but the money had been stolen by the accused. The accused thereafter went into hiding; he traveled to the North alleging that he was facing financial hardship in Accra. The accused person dishonestly appropriated the complainant's property. He is hereby convicted of the offence.

### **Mitigation**

We pray that the court have mercy on the accused. Since this happen to be is first convict, we pray that the court will be merciful.

### **• Sentence :-**

The accused person herein is not a young man/offender. He has not shown any remorse. Mr. Daniel Korang in his book - **Criminal**

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stated:

*“...In imposing sentence, the courts have often considered as a mitigation factor the assistance of the accused gives to the police or law enforcement agencies in respect of the crime charged ... where one or some of the accused persons assist the police in detecting the crime or recovering the subject matter of the crime, the court may take that assistance into consideration as a mitigating factor ...”*

In **Dabla and others vs The Republic (1980) GLR 501 - 520**, Taylor J (as he then was) stated:

*“The first and fourth appellants help the police in recovering practically all the stolen articles. I think such behavior is normally accepted by the courts as a mitigating factor in punishment”.*

In this case, the accused did not co-operate with the police, he has failed to refund the money to the complainant. He took the police to a different location and indicated that he had no place of abode. Custodial sentence will be imposed to serve as deterrence to like minded individuals at the Airport. Accused is hereby sentenced to 40 months imprisonment with hard labour. He is ordered to refund the money to the complainant.

**(SGD)**  
**H/H EVELYN E. ASAMOAH (MRS)**  
**CIRCUIT COURT JUDGE**