

IN THE CIRCUIT COURT '10 OF GHANA, ACCRA, HELD THIS MONDAY
THE 24TH DAY OF JULY, 2023 BEFORE HER HONOUR EVELYN E.
ASAMOAH (MRS)

CASE _____ NO.

D21/210/2022

THE REPUBLIC

V.

EMMANUEL TETTEH

CHIEF INSPR. BENSON BENNEH FOR THE REPUBLIC
MR. ASARE BAFFOUR FOR THE ACCUSED PERSON

===== *JUDGM*
ENT

• Mr. Emmanuel Tetteh is accused of unlawfully entering the room of the complainants and dishonestly appropriating 5000 pounds, wrist watch, 100 dollars, 4000 cedis, and other items belonging to the complainants. He was charged with unlawful entry contrary to section 152 of the Criminal and Other Offences Act 1960 – Act 29 and the offence of stealing contrary to section 124 of Act 29. He was charged with the offence of money laundering but the prosecution withdrew that count. The second accused (A2) was discharged after the prosecution withdrew count 4- aiding and abetting money laundering activities. A1 stated that he is innocent of the charges leveled against him.

•The facts, submitted by the prosecution, are as follows: The complainants are Ghanaians living in the United Kingdom whilst the accused Emmanuel Tetteh @ Commety 666 Escobar and Joseph Ayikwei Quaye are fishermen at Chorkor, a suburb of Accra. In September 2021, the complainants came to Ghana to attend a

funeral. They lodged in a family house at Camara- Mamprobi. On 16th October 2021 at about 4:00 am, they woke up and detected that their room had been burgled and cash the sum of £5000 equivalent to GHC 48,932.00, GHC 4000, one wristwatch valued at £250 equivalent to GHC 2,477.00, one Samsung Galaxy S6 mobile phone valued £200.00 equivalent to GHC 1958.00, one Samsung note 8 mobile phone valued £400 equivalent to GHC 3915.00, \$100 equivalent to GHC 760.00, 70 German Deutsche marks equivalent to GHC 295 and quantities of T-shirts value unknown stolen. The Samsung Galaxy S6 mobile phone had a tracker on it. A team of policemen from Mamprobi led by the District Commander tracked the missing phone to A1's place of abode at Chorkor.

A1 who was then in his room was ordered to come out. He refused to open the door. After several efforts to persuade him to come, A1 armed with a dagger came out and attempted to stab the District Commander who had wanted to arrest him and thereby escaped. His room was searched and the sum of £ 2790.00, GHC 4000, three Samsung mobile phones, one LG mobile phone, one techno mobile phone, one Infinix mobile phone, one itel mobile phone, one faulty wristwatch, five necklaces, nine perfumes, eight kitchen knives, three cutlasses, one hammer, four screwdrivers, four pen drives, five memory cards, one modem, one computer mouse, one auxiliary cable, one talisman, one plier, one Nasco flat screen television and fourteen backpacks were found and brought to the station and kept as exhibits. On the 3rd of November 2021, the Mamprobi police command had information that A1 used the proceeds of his stealing expedition to procure fishing nets and one outboard motor valued GHC 19,000.00 and that these items were in the custody of his uncle, A2.

Acting on this information, A2 was arrested and 20 sacks of fishing nets, 3 sacks of fishing ropes valued GHC 60,000 and one outboard motor valued GHC 19,000 were retrieved from his room. A2 in his caution statement informed the police that all the items retrieved from his room belong to A1. In October 2021, he led A1 to a shop at Cow Lane – Accra where he purchased the fishing nets together with the fishing ropes and Yamaha outboard motor- though he knew A1 was not working at the time of purchase. On 19th April 2022. A1 was arrested at the Police Headquarters, in Accra.

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 first prosecution witness testified that on 26th September 2021, she came to Ghana with her husband to attend her father-in-law’s funeral at Berekum. They went to the funeral and came back on Wednesday 13th October 2021. She lived at house number 10 Chokome St. Camara. On 16th October 2021 at about 4:30 am, her husband woke up and detected that someone had opened the sliding window at the balcony. They checked and detected that her Samsung S6,

Samsung Note 8, T-shirts, GHC 4000, and £5000 had been stolen. That her Samsung S6 had a tracker on it. She reported the case at the Mamprobi police station.

- PW2, the husband of PW1, corroborated the evidence of PW1. He added that when he woke up on the day of the incident, he detected that his hand luggage was not in his room and the sliding window was opened and that they went out to the balcony and saw all the bags on the floor, with the content scattered.

According to the Investigator, PW3, the police visited the crime scene after the case was reported. The complainant led the police to a story building apartment at Camara, walled and gated. That investigation at the crime scene revealed that thief or thieves entered the building by climbing to the balcony on the upper floor where the sliding door was forced open and two small traveling bags were taken from the room and placed on the balcony with the content scattered on the floor.

On 16th October 2021, the complainant informed the police that her son had been able to track her Samsung phone, and its last location was Chokor. The police team proceeded to Chokor the last location of the stolen Samsung Galaxy S6 phone which was tracked to A1's room. For almost 40 minutes, A1 refused to open the door. He was heard on the phone calling people to come to his aid. It was when the team tried to open the door with force that A1 came out armed with a dagger and attempted to stab the Commander. The investigator added that he also attempted to arrest A1 but the dagger made it impossible to arrest him and he managed to escape. On 19th April 2022, Mamprobi Police had information that A1 had been spotted at the Accra Regional Police Headquarters where he made a petition against some individuals. He was arrested.

- The accused was called upon by the court to open his case after a prima facie case had been made against him. In his witness statement filed on 22nd June 2022, the accused stated that: he is a fisherman and also operates a lucrative drinking bar. Sometime in the year 2021, he went fishing on his fishing boat labeled 'Ayitey.' On board was his sibling, Allotey.

On return from that expedition, he saw an abandoned bag ashore which he took. He opened it and saw 20 pounds. The news went viral that he had found foreign currency offshore. He resolved to take the money home and kept it in anticipation that the owner would show up for his or her money. That he had been saving money towards the purchase of an outboard motor and fishing nets. Because the prices of the outboard motor and nets kept fluctuating, he was advised to change the cedis to either pounds or dollars so that he would not lose. That he saved about 4000 pounds from his fishing and drinking bar business and he had over GHC 8000 on him which he planned to change to pounds. That some people who knew he had saved pounds capitalized on the news that he had found pounds offshore to conspire with the police to unlawfully take his money and other properties.

- 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 Supreme Court case of **Ellis Tamakloe V.The Republic** Criminal Appeal Number J3/2/2009 dated the 17th February 2010, Justice Ansah stated:

"It is not always that there will be direct evidence to prove the commission of an offence and circumstantial evidence has often been used. In the leading case of The State v Anani Fiadzo [1961] 1 GLR 416-419 the Supreme Court held that: "A presumption from circumstantial evidence should be drawn against an accused person only when the presumption follows irresistibly from the circumstances proved in evidence; and in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt."

In other words, as was held in Duah v The Republic [1987-88] 1 GLR 343-360, it was only when the guilt of an accused person had necessarily to be inferred from the facts before the court that it would be safe for a court to act upon circumstantial evidence. In a recent decision by this court in Logan v The Republic [2007-2008] Aninakwa JSC re-echoed the law on circumstantial evidence when he said: "... for circumstantial evidence to support a conviction it must be inconsistent with innocence of the accused. It must lead to irresistible conclusion not only that the crime had been committed but it was in fact committed by the persons charged in order to arrive at a definite conclusion. Conviction based on circumstantial evidence which is not supported by facts is wrongful."

- The undisputed fact is that the accused had in his room, at the time the police visited, foreign currencies (pounds, dollars), cedis, knives, and other implements

indicated in *Exhibit F* in his room. He claims ownership of the money and hence filed a petition against the police officers at the police Head officers.

The incident occurred on 16th October 2021 and the tracking device led the police to the accused person's room- as its last location. The complainants, United Kingdom residents, had pounds, dollars, cedis, and other items in their room which were stolen. Foreign currencies, knives, and other items were retrieved from the accused room a few hours after the incident.

- The accused, in his witness statement, asserted that he found 20 pounds ashore after his fishing expedition. However, in his caution statement (Exhibit A), he stated that he did not know the value of the money allegedly taken at the beach. He stated: "On that fishing expedition, I was the leader on the fishing boat. Among the crew was my sibling called Samna Allotey. I did not know the value of the pounds that I took from the beach." The accused in paragraph 3 of his witness statement asserted that his fishing boat is labeled 'Ayitey.'

However, his witness *-DW1* who alleged that he went on the said expedition with the accused contended that the canoe is labeled 'Thank you, God.' These inconsistencies disclose that the accused never went on any fishing expedition and found pounds ashore. The accused has failed to lead any evidence to prove his assertion that he has a taxi cab and a 'lucrative drinking bar business - from which he realized the money.

- The evidence establishes that the first accused committed the crime; he unlawfully entered the complainants' room and stole the items stated on the charge sheet. The first accused is hereby convicted of the offences.

Plea in mitigation by counsel for accused – We pray that you temper justice with mercy. The accused person being the elderly son of his father who is somehow

disabled has the burden of providing for his immediate family including his siblings. As the bread winner, imposing custodial sentence will lead to untold hardship on his family. The accused has always been in court and has shown remorse. The approach of the court has been to offer a young man opportunity to reform. If he is spared a custodial sentence, he will not enter someone's house to take anything. We pray he is admitted to non-custodial sentence.

Mr Daniel Korang in his book – Criminal Prosecution in Ghana – Practice and Procedure at page 588 – 589 stated:

“... Voluntarily surrender, co-operation with the police ... may afford a reason for mitigation of sentence ... where the accused person demonstrates that he regrets for committing the offences and pleads for a second chance to lead a good life, the court may consider it in mitigation ...”

The accused did not show any remorse. He did not co-operate with the police. He attempted stabbing the police commander. Custodial sentence will be imposed to serve as deterrence to like-minded individuals. Accused is hereby sentenced to 6 years imprisonment with hard labour on each count. Sentence to run concurrently.

RO:

Section 146 of the *Criminal and other (Procedure) Act 1960-* Act 30 provides:

145. Restitution of property found on person arrested

Where, on the arrest of a person charged with an offence, property is taken from that person, the Court before which that person is charged may order that the property or a part of the property be restored to the person who appears to the Court to be entitled to the property, and, where that person is the person charged, that it be restored to that person or to any other person the Court may direct, or

that it be applied to the payment of the compensation directed to be paid by the person charged

Section 146 of Act 30 - Restitution of property stolen

Where a person is convicted of having stolen or having obtained property fraudulently or by false pretences, the Court convicting that person may order that the property or a part of the property be restored to the person who appears to the Court to be entitled to it.

The accused used some of the money stolen to purchase outboard motors, fishing nets and ropes. Thus, these items and the Samsung phones, money, and television should be released to the complainant to cover up their loss. The accused is ordered to pay the remaining balance.

(SGD)

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