

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

CASE \_\_\_\_\_ NO.

D7/411/2023

THE REPUBLIC

V.

MOHAMMED RAZAK

CHIEF INSPR. BENSON BENNEH FOR THE REPUBLIC

MR. ALFRED NII ADJIN MENSAH FOR THE ACCUSED

===== *JUDGM*  
*ENT*

- Mr. Mohammed Razak is accused of dishonestly appropriating the complainant's money(coins), which was in a jackpot game machine. He was charged with the offence of stealing contrary to section 124(1) of the Criminal and Other Offences Act, 1960 – Act 29. He was also charged with the offence of threat of death contrary to section 75 of Act 29.

- The facts, presented by the Prosecution, are as follows: on 5th March 2023 at about 04:15 hrs., the accused went to play the complainant's jackpot game. Whiles playing the game, the accused was seen using a mechanism of a single broomstick stacked to a fifty pesewas coin to steal coins from the jackpot- by witness Amidu Abubakari, a worker at the bar. The witness arrested the accused together with the exhibits cash of GHC 226.00 coins drawn from the jackpot. The witness informed the complainant and they handed over the accused to the Neoplan Police station for investigation. A search was conducted on the accused

person at the charge office where additional GHC 40.00 coins were retrieved from his pocket- making a total of GHC 266.00 coins stolen from the jackpot. On that same day, while the accused person was in cells for the offence of stealing, he threatened the complainant to wit: 'I will hire thugs to butcher you or I will do it myself'- to the hearing of the police officer and community police assistant on duty. During investigations, the accused person admitted the offences in his caution statement and was accordingly charged.

In the case of **Akwasi Annin V. The Republic Criminal Appeal No. H2/05/2016- 23rd October 2017** Justice Ayebi, JA stated:

*"...This constitutional provision accords with the basic elementary principle that "he that asserts assumes the onus of proof". Therefore, the prosecution who alleged the accused has committed a crime must prove the allegation (section 11(1) of NRCD 323 refers). ... To cap it all on the burden of proof assumed by the prosecution, section 15(1) of the Evidence Act, 1975, (NRCD 323) provides that:"Unless and until it is shifted, the party claiming that a person is guilty of crime or wrongdoing has the burden of persuasion on that issue".*

*What the section means is that until the prosecution has succeeded in establishing a prima facie case against the accused in which case the accused will be required to explain his conduct, there will be no burden on him to prove anything.*

*The standard of proof of a crime in a criminal trial which the burden of proof on the prosecution must attain and the standard which the accused's defence must reach are not the same either. While the prosecution is required to prove the case against the accused beyond reasonable doubt, the accused need only raise a reasonable doubt. The principle has been*

*codified in various sections in the Evidence Act, 1975 (NRCD 323) and they are worth quoting in extenso..."*

- The bar attendant, the first prosecution witness, contended that on 5th March 2023, at about 4:30 am, he was standing at the Centre of the spot when he saw the accused and his friend standing by the game. He watched closely and saw the accused removing coins from the jackpot without playing the game. He saw the accused withdrawing coins from the jackpot four consecutive times. On the fifth attempt, he went and arrested the accused and demanded the coins stolen. The accused without hesitation handed over all the coins he withdrew from the jackpot. That the accomplices of the accused bolted.

- The third prosecution witness, a police officer, asserted that on 5th March 2023 at about 4:30 am, whilst on duty as the last counter NCO at the charge office, the accused threatened to kill the complainant. This evidence was corroborated by the 4th prosecution witness, a community police assistant.

- The accused was called upon to open his defence after the prosecution had closed its case. The accused in his witness statement alleged that: he did not know the complainant until the matter was reported to the police. On 5th March 2023 at about 3:00 am, he went to a game center near the articulator station at Kwame Nkrumah circle to play a jackpot. He won an amount of GHC200- all coins. After winning, the caretaker of the jackpot engaged him in an argument, asking him to tell him how and when he played the game to win that amount. After his explanation, the complainant and three others forcibly collected the coins from him. The complainant was informed by the caretaker that he had stolen money from the jackpot machine. The complainant with the assistance of

the others escorted and handed him over to the Neoplan police. He was detained. That it is not true that he stole any money from the jackpot machine or threatened to kill the complainant.

- The accused in his caution statement- **Exhibit C** admitted that he threatened the complainant. He stated: *"...On 4th March 04:30 am, I was arrested for stealing the complainant's coins, an amount of GHC 322. When I was being escorted to the police station, I was slapped by the complainant, unprovoked. Due to what the complainant did to me, I became furious, and out of annoyance, I threatened the complainant that I would hire thugs to butcher him or I would do it myself when I come out. That I plead with the complainant to temper justice with mercy and that would not happen again. That it was a mistake to utter such words towards the complainant. I have regretted threatening the complainant."*

In the case of **John Cobbina V. The Republic** Criminal Appeal No. J3/07/2019 19th February, 2020 Justice Dordzie (Mrs.) JSC Stated:

*"...Stealing is defined by section 125 of the Criminal Offences Act 1960, Act 29 as follows: "A person steals who dishonestly appropriates a thing of which that person is not the owner."*

*The essential ingredients of the crime of stealing which the prosecution ought to prove beyond reasonable doubt therefore are:*

*a) The subject matter of the theft ... the appellant is accused of stealing belongs to another person. b) He appropriated ... and c) He did so dishonestly...*

*The Oxford Advanced Learner's Dictionary defines appropriation as "the act of taking something which belongs to somebody else, especially without*

*permission” Section 122 of the Criminal Offences Act 1960, Act 29 explains what constitutes an act of appropriation*

*“Acts which amount to an appropriation*

*(1) An appropriation of a thing by a trustee means a dealing with the thing by the trustee, with the intent of depriving a beneficiary of the benefit of the right or interest in the thing, or in its value or proceeds, or a part of that.*

*(2) 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 a person may be deprived of the benefit of the ownership of that thing, or of the benefit of the right or interest in the thing, or in its value or proceeds, or part of that thing.”*

- The evidence on record reveals that the accused on the day of the incident went to the complainant's spot and in the guise of playing a game, withdrew 50 pesewas coins in the machine without the owner's consent. He used a mechanism he creatively created; a broom firmly attached to 50 pesewas coins (*Exhibit G*) to steal the coins (*Exhibit F*).

**Threat** -Sections 75 of the Criminal and Other Offences Act, 1960- Act 29 provide:

*75. Threat of death -A person who threatens any other person with death, with intent to put that person in fear of death, commits a second-degree felony.*

In the case of **Behome v. The Republic (1979), GLR 112-** Justice Osei-Hwere J (as he then was) stated:

*“...In the offence of threat of death, the actus reus will consist in the expectation of death which the offender creates in the mind of the person he threatens whilst the mens rea will also consist in the realisation by the*

*offender that his threats will produce that expectation. It matters not, therefore, whether the threats were related to the present or to the future...”*

The evidence shows that the accused in the police cell indicated that he will hire thugs to kill the complainant, in the presence of the police officers who testified of that fact in this court. The accused admitted the offence in his caution statement the offence and pleaded for forgiveness. The court finds that the accused indeed stole the complainant's coins in the jackpot machine and threatened to kill the complainant. He is hereby convicted of the offences.

Taking into account accused person's plea in mitigation, accused person was unable to meet the bail terms and has been in police custody since March, 2023. He is a young and first time offender. In the circumstance he is hereby sentenced as follows:

Count 1 – 50 penalty units in default 40 days imprisonment with hard labour.

Count 2 – 50 penalty units in default 40 days imprisonment with hard labour.

Sentence to run concurrently.

RO: The coins should be released to the complainants.

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