

CORAM: HER HONOUR SEDINAM AWO BALOKAH (MS.), JUDGE,
SITTING AT THE CIRCUIT COURT 2, ADENTAN, ACCRA ON THE 9TH
DAY OF FEBRUARY, 2023

CASE NO: D9/48/2022

THE REPUBLIC

V.

ATSU BEDZO

ACCUSED

PERSON.....

PRESENT

C/INSPR. MAXWELL LANYO.....PRESENT FOR

PROSECUTION

PRO SE REPRESENTATION FOR ACCUSED PERSON

JUDGMENT

The Accused Person has been charged with the following offences;

- 1) **Causing Unlawful Damage under Section 172(1)(A) of the Criminal and Other Offences Act, 1960, (Act 29)**
- 2) **Unlawful Entry under Section 152 of Act 29.**
- 3) **Attempt to Commit Stealing under Section 18(1) and Section 124(1) of Act 29.**

The Accused Person pleaded **NOT GUILTY** to all three (3) Counts as charged after the Charges were read and explained to him in Ewe, the language of his choice for the entire proceeding.

The facts grounding the charges as presented by the Prosecution are as attached to the Charge Sheet.

The Prosecution in discharging its evidentiary burden per **Sections 13(2) and 11(2) of the Evidence Act, 1975 (NRCD 323)** must lead sufficient evidence to prove the Guilt of the Accused Person with respect to the three (3) offences charged.

In doing so, the Prosecution presented three (3) Witnesses in its attempt to prove its case. The first witness (PW1) was the Complainant in the case, Faustina Omari. She testified that, on 4th June 2022 at around 11:30 a.m, she locked her door and visited the toilet. When she returned, she detected that someone had caused damage to the padlock she had locked her door with and that the trap door had been locked on the inside. Suspecting that there was an intruder in her premises, she quickly informed her landlord and he rushed over. Her landlord and another tenant forced her trap door open. They found the Accused Person herein inside PW1's porch. When the Accused Person was asked what he was doing in PW1's room, he did not answer. PW1 further testified that when she searched her room, she realized that the Accused Person had removed PW1's itel phone which she had left on charge inside her room and that the Accused Person had brought the phone to the porch and placed it on a table. PW1 further found that the Accused Person had removed GHC50, from her handbag and had thrown them on the floor. The Accused Person was arrested and a Police patrol team was called to arrest the Accused Person.

The Accused Person asked PW1 under cross-examination if she saw him in her room. PW1 confirmed that she saw the Accused Person coming from her bedroom and coming onto the porch. When asked if she had seen the Accused Person holding her itel phone and the GHC50, the witness (PW1) confirmed her earlier testimony that she noticed that the Accused Person had removed her itel phone from the bedroom where it was charging and had come to place it on a table on the porch. Accused Person asked PW1 if she saw him damaging her Padlock, PW1 said no but that it was not damaged when she locked it before she left for the toilet. Essentially the Accused Person put it to PW1 that she saw him standing at the entrance of her door and then called a man and they both pushed the Accused Person into PW1's room.

PW2, who is PW1's landlord, testified that on 4th June 2022 around 11:30a.m, he was in his house when he heard PW1 shouting, "thief!". He quickly came out. PW1 then told him that she suspected someone had entered her room and locked the door from the inside. PW2 then sought the assistance of others and PW1's trap door was broken or forced open. They all saw the Accused Person inside PW1's porch. When he was asked what he was doing there, he said nothing. When PW1 went around her room, she noticed that her phone which had been on charge had been removed by the Accused Person and brought outside. PW1 further noticed that some GHC50 of hers which were in her bag inside her room had been brought out and spread on the floor of the porch. PW2 testified that the Accused Person was arrested and handed over to a Police Patrol team which was called to come to the scene.

Under cross-examination of PW2, it came to light that PW2, as the landlord of the property and owner/operator of the toilet facility in the property, was seated outside collecting money from users of the toilet facility the day and time of the alleged incident. It also came to light that PW1's room or premises was about four(4) or five(5) meters from the toilet which members of the public also had access to subject to the payment of money to PW2. It was further revealed that from where PW2 sits to collect money from the toilet users, he cannot view anyone entering PW1's premises. PW2 further clarified that one would not use the front of PW1's premises on the way to use the toilets. PW2, answering whether he saw the Accused Person when he came to use the toilet facility said that, he would have had to receive payment for Accused Person if the latter had come to use the toilet. There was one toilet opposite the entrance of PW1's premises. PW2 said that he did not know if that toilet was occupied at the time of the alleged incident.

The case investigator was the 3rd Prosecution witness (PW3). She testified per her Witness Statement and put into evidence the Investigation Caution Statement (ICS) of the Accused Person (**Exhibit A**), the Accused Person's Cautioned Charge Statement (**Exhibit B**) and a photograph of Accused Person's slippers, a yellow screwdriver and a blue padlock (**Exhibit C**). PW3 testified that, upon a visit to the alleged crime scene in the company of the Accused Person and PW1, she observed the following;

- a) A screwdriver on the floor supposedly used to unlawfully enter PW1's premises, which Accused Person denied ownership of.

- b) A pair of slippers which the Accused Person identified as his slippers.
- c) Controversy between the Accused Person and PW1 about how PW1's itel phone left the bedroom and turned up on a table on the porch and how her GHC50 came out of her bag which was in her bedroom and ended up spread or scattered on the floor of the porch.
- d) A damaged padlock which PW1 identified as the one she used to lock up her premises before leaving for the toilet.

Under cross-examination, the Accused Person put it to PW3 that the yellow screwdriver in **Exhibit C** was not his. PW1 insisted that it could only belong to the Accused Person since it was the Accused Person who had entered PW1's porch.

Upon due consideration of all the evidence adduced by the Prosecution through its three (3) Witnesses, the Court made a finding that a prima facie case with respect to the 3 counts charged (**Causing Unlawful damage to a padlock, Unlawful Entry and Attempted Stealing**) had been established against the Accused Person for the following reasons;

- 1) The Prosecution led sufficient evidence to show that PW1's lock had been damaged by the person who was subsequently found inside PW1's porch. This person was the Accused Person herein. (**see Exhibits C and B and Section 172(1)(A) of Act 29**).
- 2) The Prosecution had led sufficient evidence to show that the Accused Person who was found inside PW1's premises without her consent had unlawfully entered PW1's premises. (**See Section 152 of Act 29 and Exhibit B and C**)
- 3) The Prosecution had led sufficient evidence to show that the Accused Person who was the only one found within the porch of PW1's premises

had removed PW1's itel phone which PW1 had been charging in her bedroom and he had brought the said phone to the porch area where he was found. Further, the Prosecutions' Witnesses had adduced sufficient evidence to show that PW1's GHC50 had been removed from her bag from the bedroom and scattered on the floor of the porch where the Accused Person and nobody else was found. This sufficiently established the fact that the Accused Person who was found in PW1's premises had attempted to dishonestly appropriate PW1's itel cell phone and GHC50. **(see Section 18(1), 124(1), 120(1)(b) & (2), 122(2), 123(3) and 125 of Act 29).**

The Court therefore called on the Accused Person to open his defence. The Accused Person elected to testify on oath.

The Accused Person per **Section 11(3) and 13(2) of NRCD 323** has the obligation to lead sufficient evidence to raise a reasonable doubt as to his guilt on all three (3) Counts as charged.

In his testimony, the Accused Person told the court that he is a dispatch rider and that he got to know both PW1 and PW2 on the date of the alleged incident. The Accused Person testified that he knew nothing of all three (3) charges leveled against him and that he went over to PW2's premises or property on the fateful date in order to use PW2's toilet facility. Accused Person said that he did not see anyone at the entrance of the property to make payment to, so he proceeded to PW1's door to knock to see if anyone would answer him. Suddenly, PW1 came out of the toilet cubicle and asked him why he was at her premises. She asked the Accused Person if she was the collector of payments for the use of the toilets. She then raised an alarm. Certain boys came around and started to beat the Accused Person up. The Accused Person was able to identify the slippers in **Exhibit C** as

his own. However, he said the screwdriver and the padlock did not belong to him.

Under cross-examination, the Accused Person denied causing damage to PW1's padlock. He denied entering PW1's premises unlawfully. Accused Person further denied attempting to steal PW1's itel phone and GHC50.

In determining whether or not the defence put up by the Accused Person raises a reasonable doubt, reference is made to his testimony and his Cautioned Statements, **Exhibits A and B**. In his testimony, the Accused Person clearly tells this Court on oath that, he went to PW2's property in order to access the toilet facility run by PW2. However, a careful look at his Cautioned Statements (**Exhibits A and B**) show that the Accused Person had stated that he went through PW2's property on his way to town. The Court wonders which version of the Accused Person's reasons for being on PW2's property, it ought to take as the Accused Person's truthful version. This leaves more than a dent in the credibility of the Accused Person. Further, the Accused Person could not tell the Court why his slippers were found in PW1's porch. The Accused Person was not able to tell the Court how he got onto the porch of PW1 is an enclosed space locked with a padlock on the outside. The Accused Person could not speak to the itel phone that had magically left the bedroom where it was being charged to appear on the porch on a table. The Accused Person could neither tell the Court how PW1's GHC50 left her handbag which was in the bedroom and had gotten scattered on the porch floor where he (Accused Person) was found.

The Accused Person tells this Court that he wanted to use the toilet facility run by PW2. Yet, he did not pay PW2 the requisite fees for using the said facility. PW2, when PW1 raised an alarm, readily and quickly arrived at the scene but the Accused Person somehow did not see him to pay him for the use of the toilet

facility. Further, PW1's porch was not one of the toilet cubicles, therefore, Accused Person's sudden presence therein despite the lock to it having been secured with a padlock, was more than believable. The evidence presented by the Accused Person leaves the Court with no other option than to find that he was unsuccessful in raising a reasonable doubt as to his guilt with respect to the three (3) charges leveled against him.

In the circumstances, the court finds that the Prosecution has proved the three (3) offences charged beyond a reasonable doubt.

The Accused Person is thus found **GUILTY** of causing unlawful damage to PW1's padlock, **GUILTY** of Unlawfully entering PW1's room with the intention to steal and **GUILTY** of the offence of attempting to steal PW1's itel phone and GHC50.

The Accused Person is accordingly **CONVICTED** on all three (3) counts as Charged.

Pre-Sentencing

Prosecution: Accused Person has no previous conviction.

Accused Person (Ewe): I am pleading for mercy.

Prosecution: Accused Person was initially arrested on suspicion of a similar offence and when he was granted a Police Enquiry Bail, he was found committing the offence in the current case. We pray the Accused Person is punished to deter him and others alike.

By Court:

Does the Accused Person have any previous conviction?

Prosecution: No

By Court – Sentencing

Accused Person is sentenced on Count 1 to serve 1 year imprisonment. Accused Person is sentenced on Count 2 to serve 2 years imprisonment. Accused Person is sentenced on Count 3 to serve 4 years imprisonment. Sentences shall run concurrently.

(SGD)

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**H/H SEDINAM AWO BALOKAH
JUDGE
CIRCUIT COURT
ADENTA**