

IN THE CIRCUIT COURT HELD AT DANSOMAN, ACCRA ON  
THURSDAY, THE 20<sup>TH</sup> DAY OF JULY, 2023 BEFORE HER HONOUR  
HALIMAH EL-ALAWA ABDUL BAASIT, CIRCUIT COURT JUDGE

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SUIT NO.: CCD/C8/17/23

THE REPUBLIC

VS

DOMOTEY APPAH SHADRACK

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**PARTIES:**

ACCUSED PERSON – PRESENT

CHIEF INSPECTOR WONDER FOR THE REPUBLIC – PRESENT

**COUNSEL:**

NO LEGAL REPRESENTATION

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**RULING ON WHETHER A PRIMA FACIE CASE HAS BEEN MADE BY  
THE PROSECUTION**

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**Background:**

The Accused Person was charged with the offence of Stealing contrary to Section. 124(1) of the Criminal and Other Offences of Act 1960, (Act 29) and the Particulars of the Offence are that in the month of January 2023 at Kwame Nkrumah Circle in the Greater Accra Circuit and within the jurisdiction of this court, dishonestly appropriated iPhone 6S valued GH800.00, iPhone 12 pro valued GH6,700.00, iPhone 7 valued GH1,250.00, iPhone 14 pro valued GH7,000.00, unlocking money worth GH3,000.00 making a total of GH¢18,750.00.

The brief facts of the matter as incorporated from the Charge Sheet are that both the Accused person and the complainant are SHS mates. In the month of January, 2023, Accused person led complainant to buy Four (4) iPhones at a

cost of GH¢18,750.00 at Kwame Nkrumah Circle. Complainant after purchase of the phones detected them to be faulty and as such returned the phones to accused person for repairs. Accused person on receipt of the phones sold them out without the consent of the complainant and made use of the proceeds. Complainant made report to the Police leading to the arrest of the accused person who was subsequently arraigned before this instant court.

### The Plea

On the 8/5/2023, the plea of guilty was entered for the Accused Person and the Prosecution assumed the burden to prove the guilt of the Accused Person beyond reasonable doubt. To prove their case, the Prosecution called Two (2) Witnesses and tendered in the following as evidence;

**Exhibit "A"** - Complainant Statement to the Police;

**Exhibit "B"**- Investigation Caution Statement of the Accused Person;

**Exhibit "C"**- Charge Statement of the Accused person.

At the close of the case of the Prosecution, the Court has to determine whether the Prosecution has established a prima facie case against the Accused Person to require him to open his defence.

### Determination

Article 19(2) (c) of the Constitution 1992 provides that '*a person charged with a criminal offence shall be presumed innocent until he is proved or has pleaded guilty*'. Apart from strict liability offences, the general rule is that, throughout a criminal trial, the burden of proving the guilt of the accused person remains on the Prosecution. (See **Asante vs. The Republic** (1972) 2 GLR 177). An accused is generally not required by law to prove anything, he is only to raise reasonable doubt in the mind of the court as to the commission of the offence to secure an

acquittal. (See COP vs Antwi (1961) GLR 408 SC; Bruce Konua vs The Republic (1967) GLR 611).

The Accused Person herein is charged with Stealing and Section 125 of Act 29 defines stealing as; *'a person steals if he dishonestly appropriates a thing of which he is not the owner'*. Thus, to secure a conviction of the Accused Person on the Charge, the Prosecution must prove that the Accused Person, dishonestly appropriated Four iPhones. The court shall examine the evidence of the Prosecution to establish whether or not a prima facie case has been made out against the Accused Person.

#### Evidence of Witnesses

The first Prosecution Witness (PW1) was the Complainant, resident in the Western Region, who testified that in January this year, he started dealing in iPhones with the Accused Person who was his school mate in secondary school at Ideal College International at Takoradi. He testified further that the Accused Person, who is also into iPhone business, led him to purchase different cell phones but one was faulty of which he informed the Accused Person who told him to return the cell phone for a replacement but later said that it was with a repairer. Complainant testified again that he came back to Accra to check the cell phone and the repairer was not there, so I bought new cell phone which was iPhone 12 pro costing GH¢6,700.00 and he was the one I gave the money to purchase for me and when I return, the phone he mentioned, the seller said he will give me new one later and that time I was sending the iPhone 12 pro, I added iPhone 7 and my iPhone 14 pro was with his elder brother, so he went for it and decided to send all the cell phones with him to me.

5. Not knowing, he has already sold all my cell phones that he decided to send them to me including my iPhone 14 pro which was with his elder brother and it was confirmed by himself.

6. I purchased another iphone 6s at GH¢800.00the 14pro iphone Gh¢7000.00 with unlocking costing Gh¢3000.00 and iphone 7 which cost Gh¢1,250.00.
7. I tried as much as possible to meet him but has been playing hide and seek. I did my investigation to found where he is and he was caught later at Kaneshie and handed over to Police for further investigation.

PW 2 is D/Inspector . Richard Marfo who testified that on 9/3/2023, PW1 with the assistance of Two (2) Policemen arrested and brought the Accused Person sometime in 2022. PW2 testified further by reiterating the narrations of PW1 and concluded by stating that in the course of investigation, the accused person made it to Police that he collected Gh¢7,300.00 from the complainant.

### **Analysis**

The duty of the court at this stage, is to determine whether the prosecution has been able to establish a prima facie case against the Accused Person. In other words, the Prosecution, per their witnesses and evidence before the court, must establish that the Accused Person indeed committed the offences he has been charged with. Regarding the burden of proof, section 11(2) of the Evidence Act, 1975 (NRCD 323) provides that *'...in criminal action, the burden of producing evidence, when it is on the Prosecution as to any fact which is essential to guilt, requires the Prosecution to produce sufficient evidence so that on all the evidence, a reasonable mind could find the existence of a fact beyond reasonable doubt'*. In the case of **Kwabena Amaning Alias Tagor and Anor. vs The Republic** (200) 23 MRLG 78, the Court held that: *"prima facie evidence is evidence, which on its face or first appearance, without more, could lead to conviction if the accused fails to give reasonable explanation to rebut it ... What the trial Court has to find out at this stage that the Prosecution has closed its case is whether or not the evidence led has established*

*all the ingredients of the offence charged for which the accused person could be convicted if he failed to offer an explanation to raise doubts in the said evidence”.*

Per the record before this instant court and on the totality of the evidence led by the Prosecution, the oral testimonies of the Prosecution witnesses and the documentary evidence specifically **Exhibit ‘A’** which is the Caution Statement of the Accused Person. The Court is of the opinion that the said Exhibit ‘A’ reveals some form of admission by the Accused Person establishes a prima facie case as a reasonable doubt has been raised in the mind of the court. In the case of **Ekow Essuman vs The Republic**, [2016] DLHC 9242, the Court held that *“where the Court has ruled that there was a prima facie case made out and the accused person was to enter into his defence, it does not mean that the accused was guilty. It simply means that the evidence on record as led by the Prosecution has gone beyond mere allegations or speculation that calls for some clarification or explanation, as it were, from the accused person. It is after the accused person has given his side of the story that the Court will be seised with jurisdiction to pronounce whether he is guilty or not. In other words, it is only at the stage where the accused has offered evidence in rebuttal of the Prosecution’s case that the Court can make findings of facts”.*

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## **DECISION**

In the circumstances, the totality of the evidence led by the Prosecution, the Panel finds that a prima facie case of defrauding by false pretences has been made out against the Accused Person to warrant calling upon him to open his defence so as to give his side of the story to raise a reasonable doubt in the

case of the Prosecution. The Accused Person shall prepare to open his defence.

**H/H HALIMAH EL-ALAWA ABDUL-BAASIT.  
CIRCUIT COURT JUDGE**