

**IN THE CIRCUIT COURT 3, HELD AT ACCRA ON THURSDAY THE 31ST DAY OF
JANUARY 2023 BEFORE HER HONOUR SUSANA EDUFUL (MRS.), CIRCUIT
COURT JUDGE**

COURT CASE NO. D4/109/2022

THE REPUBLIC

VRS

REGINA AMEGBE

The Accused has been charged on one count of Stealing contrary to section 124(1) of the Criminal and other offences Act, 1960 (Act 29).

Brief Facts

The brief facts of the case as presented by the prosecution are that the complainant is a business man and owner of Copa Menswear Boutique La Wireless and lives at Gbawe CP while the Accused Persons was a sales girl in the said boutique and lives at Tse Addo, La. The Accused Person had been a sales girl in the boutique for about a year, which time she used to keep the keys after close of work. On the 3rd day of March 2021, the Complainant had a phone call from the Accused Person at 9:30pm that thieves had come to the shop. The Complainant rushed to the shop and saw that a lot of things in the shop had been taken away. The Complainant quickly played back the close circuit television in the shop and it revealed that the Accused had closed at around 7:00pm locked up the shop and gone home but returned later with a guy with a black polythene bag under her armpit. The two of

them went into the shop and were seen parking men's suit, shirts, trousers' watches perfumes, pair of shorts and T shirts all valued at GHC25,181.00 in a black polythene bag. The Accused was arrested to the station and a formal Complaint was logged against her. The Accused Person admitted going to the shop with a guy but indicated that she was tricked by him. After investigation accused was charged with the offence.

Upon her arraignment before this court on April 11 2022, Accused pleaded not guilty to the charge of Stealing levelled against her. By this plea, the evidential burden and the burden of persuasion were placed on the Prosecution to prove the charge preferred against her beyond all reasonable doubt.

Prosecution's duty was to prove the charge preferred against him beyond reasonable doubt in accordance with **Section 13 (1) of the Evidence Act, 1975, (NRCD 323)**.

Reasonable doubt was explained by Denning J (as he then was), in **Miller v. Minister of Pensions [1947] 2 All ER 372 @ 373** as "...it need not reach certainty, but it must carry a high degree of probability, proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. Under **section 11(2) of NRCD 323**, in criminal cases the burden of proof is on the prosecution throughout. The prosecution is required to produce sufficient evidence on a fact essential to establish the guilt of the accused, so that on all the evidence a reasonable mind could find the existence of that fact beyond reasonable doubt. In the case of the accused

except in cases where a statute throws the burden upon him, he is not obliged to prove anything. All that the law requires of him is to raise a reasonable doubt as to his guilt on the fact in issue. But then unless and until Prosecution has discharged the burden of proving the guilt of the accused to the requisite degree, no burden will be shifted on to the Accused or assumed by him.

In explaining what reasonable doubt is, **P. K. Twumasi on page 124 of his book, Criminal Law in Ghana (1996)**, stated that “the doubt must be a reasonable probability and not a fanciful possibility.”

To discharge the burden placed on them by statute, the prosecution called two (2) witnesses and tendered four (4) exhibits; The Accused did not call any Witness she also did not tender anything in evidence.

PW1 was Isaac Osei Darko he is the owner of COPA Menswear and the Accused was employed by him to operate the shop where he has installed CCTV. According to PW1 he sells cloths shoes perfumes among other items in the shop. PW1 further stated that the Accused operated his shop and she closed the shop at around 7:00pm. PW1 told the court that on March 3 2021 he was at home when he received a phone call from Accused around 9:30 pm that thieves had broken into the shop. PW1 then put on the CCTV and found out that Accused left the shop around 7:17 pm, but returned around 8:28 pm with a young man holding a polythene bag and Accused packing the items in the shop into the polythene bags. PW1 reported the matter to the Police. PW1 observed that the CCTV had gone off and so suspected foul play so PW1 intimated to Accused to wait for him. When PW1 questioned Accused she

stated that armed robbers had attacked her and collected items from the shop. PW1 provided the list of items stolen from the shop and indicated the total value of the items amounting to the tune of GHC55,190.00.

PW2 was Detective Chief Insp. Ernestina K. Nagali Stationed at La Police Station. According to PW1 the case was referred to her for investigations. She got to know both the Complainant and Accused when she investigated the case. According to PW2 she accompanied the Complainant to the shop On March 3 2021. There she took pictures of the crime scene and also watched the CCTV which captured the scene at the complainant's shop. The CCTV revealed that the Accused left the shop on the said day at 7:00pm and returned at around 9:45pm with another man. Accused packed items in the shop into a black polythene bag and it was the man who sent the loaded items in the black polythene bag away. PW2 took investigation Caution Statement from Accused as well as her Charge Statement and both were tendered in evidence as exhibit A, A1 and B respectively. The photograph taken at the scene of crime was also tendered as exhibit C series as well as the CCTV footage exhibit D.

The Accused in her defence denied committing the offence she's been charged. According to her she was tricked by some two men who indicated to her that the Complainant was going to use her for rituals and so she allowed them take away some items from the shop and it was after they fled the scene that she realised it was a trick after all.

Under **Section 125 of Act 29** "A person is guilty of stealing if he dishonestly appropriates a thing of which he is not the owner."

Prosecution would therefore have to prove the following ingredients of the offence as stated in **Mensah and others v. The Republic** [1978] GLR 404:

- (i) That the Accused is not the owner of the stolen items;
- (ii) That he must have appropriated them; and
- (iii) That the appropriation was dishonest.

Prosecution would have to prove that Accused took away, obtained, carried away or dealt with the goods. Prosecution would also have to prove that Accused intended to deprive the complainants of the benefit of their ownership or of the benefit of their rights or their interest in the items or in their value or proceeds or any part.

The Accused admits that taking the items stated from the shop with another person and also states that the persons involved were two. She was however tricked by those two to do so. The Prosecution has successfully proved per the CCTV footage that it was Accused who appropriated the items belonging to PW1 from the shop. Whether or not she did the taking with other is irrelevant to exonerate her from the charge.

The Accused admitted in evidence that the men indicated to her that after taking the items from the shop they will pray and Accused will send the items home return it to the shop the next day. This is an admission that Accused deprived PW1 of the items albeit for a short period. The Prosecution has been able to prove that the accused took and carried away the items to deprive PW1 the ownership of the items.

Accused's assertion that she was tricked does not exonerate her from the offence charged.

The general presumption in Criminal Law is that a person intends the natural and probable consequences of his acts as stated in **The State v. Halm & Anor.** Court of Appeal, dated 7th August 1968, unreported; but digested in 1969 Current Cases. The Accused Persons appropriated the items from PW1's shop and therefore she intends the natural and probable consequence of her actions.

The third ingredient, "Dishonest appropriation" is explained in section 120 (1) of the Criminal Code, 1960, as follows:

"An appropriation of a thing is dishonest if it is made with an intent to defraud or if it is made by a person without claim of right, and with a knowledge or belief that the appropriation is without the consent of some person for whom he is trustee or who is owner of the thing, as the case may be, or that the appropriation would, if known to any such person, be without his consent." Proof of either an appropriation without claim of right or an appropriation without the consent of the owner would be sufficient evidence of dishonest appropriation.

It is my opinion that Prosecution has been able to lead evidence to support all the offence charged beyond all reasonable doubt and I reject the defence of the accused person as not being reasonably probable.

I hereby find the accused person guilty of the offence of stealing contrary to Section 124(1) of Act 29 and convict you accordingly.

SENTENCE

In sentencing the accused, I have taken into consideration the fact that she is a first-time offender and her plea for mitigation.

I am also conscious of the fact that it is not in the interest of society to keep her in prison for a long period. What is imperative on me in granting the Accused a reduced sentence with reference to the stipulated punishment under the law is the age of the Accused and her plea for leniency.

I hereby sentence the accused to execute a bond of good behaviour and in defaults 6 months imprisonment.

PROSECUTOR

CHIEF INSPECTOR CHRISTINE BANSAH FOR PROSECUTION

LEGAL REPRESENTATION

NO LEGAL REPRESENTATION

**H/H SUSANA EDUFUL (MRS)
(CIRCUIT COURT JUDGE)**