

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON FRIDAY, 28TH APRIL, 2023

SUIT NO. D7/26/23

THE REPUBLIC

VRS

CHARLES DUOGHAN

JUDGMENT

The accused person is before this court on a charge of stealing contrary to *Section 124(1) of the Criminal Offences Act, 1960 (Act 29)*. The particulars of offence are that in the month of August, 2022 at Joggis Estate, community 3, Tema and within the jurisdiction of this court, did dishonestly appropriate 122 pieces of scaffold valued at Ghs 73,200, the property of Kwame Otto Essiful.

The accused person elected to speak twi and after the charge was read and explained to him in his language of preference, he pleaded not guilty. The brief facts of the case according to prosecution are that the complainant, Kwame Otto Esifful, aged 47, is an Architect and reside at community 3, Tema and also owns a block factory at community 3, Tema.

In the month of August 2021, the complainant employed A1 as a block factory manager and he resides in the same house with him. During the month of August, 2022, complainant detected a theft of one hundred and twenty – two (122) pieces of scaffolds with the market value of Seventy – Three Thousand, Two Hundred Ghana Cedis (GH¢

73,200.00) in the house. The complainant confronted A1 but he denied knowledge of the theft.

Later the complainant was alerted by an informant that it was the accused person who stole the scaffold. On 30th December 2022, the complainant lodged a complaint at the community 2 police DOVVSU Unit and A1 was arrested. Investigation revealed that, accused person and one John who is now at large dishonestly appropriated the 122 of scaffolds and sold twenty (20) pieces of the scaffolds to Hassan Fuseini at the cost of Two Thousand Ghana Cedis (GH¢ 2,000.00).

An amount of Twelve Thousand Ghana Cedis (GH¢ 12,000.00) retrieved from Hassan Fuseini as proceeds from the sales of the scaffolds and same kept for evidential purposes. After investigation, accused person was charged with the offence as stated on the charge sheet and arraigned before this honorable court.

The accused person having pleaded not guilty, the burden of proof and persuasion laid on prosecution to lead cogent, credible, material and relevant evidence in proof of the charge against the accused person. However, in the course of the trial and after the evidence of PW1, he elected to change his plea to guilty simpliciter.

In order to ensure that the accused person's change of plea was voluntary and further that he understood what it means to plead guilty, I asked him the following questions:

BY COURT: How are you doing?

A/P: I am doing fine.

BY COURT: Are you educated and if so, to what level?

A/P: I have never been to school.

BY COURT: *Do you understand the proceedings so far?*

A/P: *Yes please.*

BY COURT: *Have you ever suffered from any mental derangement? This is without prejudice.*

A/P: *No please.*

BY COURT: *Again, without prejudice, have you ever administered or do you currently administer any narcotic substance to yourself?*

A/P: *No please.*

BY COURT: *You changed your plea from not guilty to guilty do you understand what it means to plead guilty.*

A/P: *Yes please.*

BY COURT: *In your own words, kindly tell me what it means.*

A/P: *My master says that I have stolen his items. It is the truth. I have stolen it.*

BY COURT: *Is your change of plea voluntarily?*

A/P: *Yes please.*

BY COURT: *Has anyone including the investigator, prosecutor, complainant, police men at the police station or anyone for that matter induced you to change your plea by the promise of a reward or the threat of duress or duress itself.*

A/P: *No please. No one has done that.*

BY COURT: *Has anyone including I myself, the court staff, the registrar and the staff at the registry, the police, prosecutors, the investigator, a lawyer or anyone for that matter demanded or obtained any property including money from you for the purpose of your receiving a lighter sentence for your plea of quilt?*

A/p: *No please. No one has told me anything of that sort.*

BY COURT: *Do you agree to the fact as read and explained to you by prosecution?*

A/P: *Yes please.*

Being satisfied based on the answers of the accused person to the questions that he was compos mentis, that he understood the plea of guilty and his plea was voluntary, I proceeded to convict him and sentenced him after pre sentencing hearing to a fifty (50) month term of imprisonment. I reserved the reasons for the sentence to be lodged at the Registry of the Court. I hereby proceed to deliver the reasons.

PRE-SENTENCING

BY COURT: *Prosecution is he known.*

Pros: *No, my lord.*

BY COURT: *Has any of the items or the value thereof been recovered?*

Pros: *Yes, my lord. He had sold 20 pieces to Hassan Fuseini and we have recovered the money from Hassan Fuseini.*

BY COURT: *Complainant, how has this affected you if at all?*

Complainant: *My lord, it has affected me immensely. The scaffolds belong to my in – law and this issue has generated a misunderstanding between us. It is now my responsibility to replace the scaffolds.*

BY COURT: *Convict, any grounds of mitigation that you would like me to consider?*

Convict: *I plead with my master – the complainant and also with the court. We hail from the same place and I have wronged him. That is all.*

BY COURT: *How old are you?*

Convict: *47 years.*

BY COURT: *Do you have a wife and or children?*

Convict: *No, my lord. We have had issues. I have 4 children.*

BY COURT: *How old are the children?*

Convict: 20, 14, 13 and years old.

BY COURT: Where are they as at now?

Convict: They are with their mother in the village.

BY COURT: What job do you do?

Convict: I am a block molder.

BY COURT: When was the last time you remitted the children?

Convict: It's been a long time since I remitted them. About a year now.

SENTENCING

The offence of stealing is a second degree felony which carries with it a maximum term of imprisonment of twenty five (25) years upon conviction. In arriving at an appropriate sentence to hand down to a convict, the court must take into account both mitigation and aggravating factors.

Kpegah J. (as he then was) in the case of *Impraim v. The Republic [1991] 2 GLR 39-47* stated that in considering the sentence to be given to an accused either upon first trial or during appeal, the courts had to take into consideration 'the gravity of the offence taking into account all the circumstances of the offence. In this wise, regard must be had to such matters as the age of the offender, his health, his circumstances in life, the prevalence of the offence, the manner or mode of commission of the offence — whether deliberately planned and executed — and other like matters.'

In sentencing the convict, I take into account the fact that he is a first time offender and he is unknown to the law but for this. Although at 47 years he cannot be classified as a young person, he has upto this age, led a crime free life. I am thus minded in the circumstance to hand down a lenient sentence.

Again, although he did not plead guilty at the earliest possible stage, the fact that right after the evidence in chief of PW1 he threw in the towel must go to his benefit. By doing so, he saved the state from wasting further time and resources in going through a full trial to waste rather scarce state resources.

In aggravation is the fact that the convict breached the trust that the complainant placed in him by stealing and selling the very items that they work with. Again, the value of the items is on the high side; that is seventy three thousand Ghana cedis (Ghs 73,200). It is only twelve thousand Ghana cedis (Ghs 12,000) which constitute less than 20% of the value of the items that has been recovered.

Convict did not only betray the trust of PW1 who had employed him and was also living with him, but he also caused him a pecuniary loss which from all indications, the convict cannot make reparation for. The complainant would most likely have to pay for the items out of pocket to his brother in law.

Furthermore, stealing is on the ascendancy within this jurisdiction and there is a need to hand down sentences that would deter others and also ensure that victims of such offences would have some sense of restitution. Stealing appears to slowly be on its way to being accepted as an adventure one can embark on without consequences within this jurisdiction. The courts must be seen to hand down deterrent sentences that would prevent this from becoming an established norm within the jurisdiction.

I have also taken into account the time spent by the convict in custody. Upon these basis, and in careful consideration of all the mitigation and aggravating factors, the convict is hereby sentenced to a 50 month terms of imprisonment.

He is also ordered to enter into a self-recognizance bond to keep the peace and be of good behavior for a period of six months after his release from custody. In default he would serve three (3) month terms of imprisonment.

(SGD)

H/H BERTHA ANIAGYEI (MS)
(CIRCUIT COURT JUDGE)

ASP EMMANUEL MENSAH FOR THE REPUBLIC