

IN THE CIRCUIT COURT ONE HELD AT ACCRA ON WEDNESDAY, 7<sup>TH</sup> FEBRUARY, 2023, BEFORE HER HONOUR AFIA OWUSUAA APPIAH (MRS), CIRCUIT COURT JUDGE

CC NO.: D4/187/2019

THE REPUBLIC

V

SAMPSON AMOH

ACCUSED PERSON

JUDGMENT

Accused person herein stands charged with one count of stealing contrary to Section 124(1) of the Criminal Offences Act 1960, Act 29 (hereinafter referred to as Act 29).

The summary of prosecution's case as per the facts sheet attached to the charge sheet are as follows;

"Complainant Nana Aka Kwayowaa is a Businesswoman. Accused person Sampson Amoh is a driver both residents in Achimota. About two years ago, complainant employed the accused person as a driver and attached him to her husband's company. Accused was assigned a Toyota Highlander with registration No.GR 473-17 to use on a hiring basis. Complainant trusted the accused so well that she made him her personal accounts officer. Accused was to use the car and collect the proceeds which were mostly paid in cheques, cash, them and deposit same in the complainant's Zenith Bank account, Airport Branch.

Accused collected various sums of money in the forms of cheques from his clients amounting to GHC.122,194.00 for the services rendered. Accused cashed the various cheques but failed to deposit the monies in the complainant's account and made use of the said amount. In November 2018, the complainant visited her bank only to find out that the accused never deposited the monies in her account as he alleged. Complainant reported the case to the police and the accused was arrested. Enquiries conducted at the Zenith Bank, Airport Branch indicates that the accused person paid only GHC25,712.00 instead of GHC.122,194.00 into the complainant's account leaving a balance of GHC.96,482.00 the accuses swindle.

During the police investigations, an amount of GHC.15,000.00 was recovered from the accused person. The accused person in his investigation caution statement admitted the offence and pleaded with the police for time to refund the money to the complainant. After investigations he was subsequently charged with the offence and arraigned before this honorable court."

Accused pleaded not guilty to the charge of stealing when same was read to him in twi, his elected language.

In every criminal prosecution, when an accused person denies an offence, prosecution assumes a statutory obligation to prove the guilt of the accused beyond reasonable doubt. **Section 11(2) of the Evidence Act, 1975, NRCD 323** (hereinafter referred to as NRCD 323) with specific reference to criminal cases reads

“in a 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 the fact beyond reasonable doubt.”

Accused having pleaded not guilty, prosecution was saddled with the legal burden of proving the guilt of accused beyond reasonable doubt.

Prosecution called two witness in proving their case. Complainant Nana Akua Kwayowaa and investigator C/Insp. Patrick Suitor testified as PW1 and PW2 respectively.

Pw1 evidence before the court is that she engaged the services of accused as a driver in charge of her Toyota Highlander vehicle. According to her, her husband’s company hired this vehicle for the use of her husband at a monthly hiring fee of GHC7,000 with accused acting as her husband’s personal driver and her personal accounts officer. She stated that accused was to collect the cheques from her husband’s company and pay same into her Zenith Bank Account. Due to the trust she had for accused, she did not check her account again after the first payment from the company was made on 1/3/2017 until October 2018 when she realized that accused had failed to pay the monies into her account. Checks from her account statement revealed that accused paid GHC5,000.00 twice in November 2017 Accused initially denied when she confronted him but layer admitted to the offence and pleaded to refund same. All efforts for

accused to refund the money had proved futile. PW2 testified that after this case was referred to him for investigations on 16/11/2018, he collected statements from PW1 and her husband as well as the Bank statement from Zenith Bank. According to Pw2, Accused upon his arrest admitted the offence and promised to refund the money in his investigation caution statement. He stated that his investigations revealed accused who was tasked to pay the proceed from the hiring of the Toyota Highlander into the account of PW1 collected the cash from the company, cashed the cheques but failed to pay same into the accounts of PW1. PW2 tendered in evidence the investigation caution statement and charge statement of accused, as exhibit A and B; one sheet document titled 'calculation of missing car rental money as exhibit C; bank statement from Zenith Bank for the period 1/1/2017 to 31/12/2017 marked exhibit D and Bank Statement from Zenith Bank for the period 1/1/2018 to 31/12/2018. Accused in his defence, accused testified that he was employed by Pw1 in 2017 and given the hiring vehicle to work with. According to him, he was attached to a company in which the husband of PW1 was the managing director on monthly sales of GHC7,260.00. he stated that at the end of each month he received the cheque from the company to be cashed and ayid into complainant's Zenith Bank, Airport residential branch. Accused stated that the first four months payment i.e  $GHC7,260 \times 4 @ GHC29,040.00$ , he collected the cheques from PW1's husband, cashed and handed over the cash to PW1. After the fourth month, PW1 travelled to Germany and around June/July 2017 instructed him to collect her Zenith Bank account and pay the monthly payment on the vehicle hiring services into same.

According to accused, PW1's husband collected the subsequent two months proceeds of the car rental sale of GHC14,520 at GHC7,260 per month from him. He thereafter started depositing the money from the cheques into the Zenith Bank of PW1. Accused contended that he was directed to service and maintain the vehicle from the proceeds of the car rentals by PW1's husband and he spent an amount of more than GHC10,000 for the period the vehicle was under his control on servicing and maintaining the vehicle. Accused further alleged that PW1's husband on three other occasions collected three cheques value after he had cashed same making the total number of monthly cheques he had collected from him during this period 5 at GHc7,260 per cheque making a total of GHC36,300. He stated that the amount of GHC25,712 PW2 found deposited in the Zenith account of PW1 was the monies he had deposited. He further testified that a sum of all the amounts stated above exceeds GHC81,000 the amount he is accused of dishonestly appropriating. Accused testified further that upon his arrest, his brother's upon the instructions of PW1 went to the company of PW1's husband and collected three outstanding cheques for PW1 during his incarceration whilst his family raised GHc15,000 and paid same to PW1. Accused therefore contended that the monies his family paid to PW1 had been paid wrongly. Accused again stated that

Dw1, brother of Accused confirmed the family of accused taking a loan of GHc15,000 and giving same to the investigator during the detention of accused by the police. He also confirmed collecting three outstanding cheques from the company of PW1's husband and cashed same for PW1 under the believe that would facilitate accused

being released on bail by the police. Stealing is defined under Section 125 of Act 29, as follows;

*“A person steals if he dishonestly appropriates a thing of which he is not the owner”*

In construing section 124(1) of Act 29, the Court in **BROBBEY AND OTHERS v. THE REPUBLIC [1982-83] GLR 608-616 at page 610** stated that the essential elements of the offence of stealing as follows;

- (i) the person charged must have appropriated the thing allegedly stolen,
- (ii) the appropriation must be dishonest, and
- (iii) the person charged must not be the owner of the thing allegedly stolen.”

In construing section 124(1) of Act 29, the Court in **BROBBEY AND OTHERS v. THE REPUBLIC [1982-83] GLR 608-616 at page 610** stated that the essential elements of the offence of stealing as follows;

- (i) the person charged must have appropriated the thing allegedly stolen,
- (ii) the appropriation must be dishonest, and
- (iii) the person charged must not be the owner of the thing allegedly stolen.”

In the case of **MALLAM ALI YUSIF v THE REPUBLIC [2003-2004] SCGLR 174** the trial judge outlined what constituted stealing: He stated thus:

*“For the offence of stealing to be constituted, therefore the relations, acts and intention to be proved in connection with the thing are:*

(i) That the person charged must not be the owner of it.

(ii) That he must have appropriated it and

(iii) That the appropriation must have been dishonest.

**DATEH-BAH JSC in the case of OSEI KWADWO II V THE REPUBLIC, 2007-2008)**

**2SCGLR 1148** also discussed the elements of stealing and had this to say *“this provision appears to establish three disjunctive criteria for determining dishonest appropriation. The first criterion is that of an appropriation made with intent to defraud. The second is an appropriation made without a claim of right and with a knowledge or belief that it is without the consent of the owner of the thing or of the beneficiary for whom the appropriator is a trustee. The third criterion is where the appropriation, if known to the owner or the beneficiary of the trust, would be without his consent”*.

Section 123 of the Criminal Offences Act 1960 Act 29 defines what constitutes the thing or subject matter of the theft. It provides “The criminal offence of stealing, fraudulent breach of trust, robbery, extortion, or defrauding by false pretence can be committed in respect of a thing; whether living or dead, and whether fixed to the soil or to a building or fixture, or not so fixed, and whether the thing is a mineral or water, gas, or electricity, or of any other nature; whether the value of the thing is intrinsic or for the purpose of evidence, or is of value only for a particular purpose or to a particular person, and whether the value of the thing does or does not amount to the value of the

lowest denomination of coin:. Thus anything of the least value could be a subject matter of stealing.

*An appropriation of a thing means any moving, taking, obtaining, carrying away or dealing with a thing with the intent that some person may be deprived of the benefit of his ownership or of the benefit of his right or interest in the thing or in its value or proceeds or any part thereof.*

*See section 122 of Act 29.*

Prosecution's case per the evidence on record is that accused although instructed to pay the monthly car hiring proceeds into the accounts of PW1 made payment of only GHC25,712 and failed to account for the outstanding amount of GHC96,482 belonging to PW1. Accused contends that he paid the first three months cheque proceeds of GHC29,040 to PW1 personally after cashing same, a total of GHC36,300 being the sum of five cheques proceed he cashed and paid to the husband of PW1, GHc10,000 on maintenance and servicing and depositing GHC25,712 into the Zenith Bank account of PW1 and three months outstanding car rental proceeds collected from the company by his brother during his incarceration amounting to GHC23, 778 which said amounts covers the amount he is alleged to have dishonestly appropriated.

PW1 under cross-examination stated that the first car rental payment was made on 1/3/2017 and he informed her of receipt of the cheques every month thereafter. she contended that accused had in all dishonestly appropriated her money to the tune of GHc96,482 but under cross-examination stated the amount to be GHc80,000. PW2 in his evidence in chief stated the amount accused had purported appropriated dishonestly as GHC81, 482. PW2 urged the court to accept his version of how much had allegedly been dishonestly appropriated by accused. PW2's exhibit C, a tabulation of the monthly cheques paid to accused by the company sums same up to 19 months i.e from 1/3/2017 to 1/12/2017 and 1/1/2018 to 1/3/2018, the 1/4/17 to 1/9/2017. Exhibit C visibly appears to be defective. PW2 admitting that per exhibit C, the year 2017 had 15 months, he could



not explain to the court the reasons for the discrepancies in the tabulation and the repetition of the months in the year 2017. He merely stated that he received exhibit C from PW1. The court shall therefore not accord exhibit C any weight. Both PW1 and PW2 contended that the cheques that DW1 retrieved from the company and paid to PW1 during the detention of accused was not part of the period in issue. However, a careful study of exhibit 2, 2A reveals that exhibit 1,1 a and 1b being the three cheques that DW1 collected from the company for PW1 was in respect of the months August and October 2018. Clearly, these three cheques although issued after the arrest of accused were outstanding cheques as claimed by accused especially since accused as at 6/11/2018 was in the custody of the police in respect of this very case. Perusal of exhibits D and E series discloses that between the period 1/1/2017 and 31/12/2018, accused deposited cash totaling GHC25,712 as contended by prosecution witness. However both PW1 and PW2 could not tell the court the number of cheques issued to accused during the period in question. PW1 admitted under cross-examination that her husband told her he made use of some of the cheques but she could not tell the court how many cheques her husband had made use of. PW2 surprisingly vehemently denied PW1's husband collecting some cheques or its proceeds from accused for his use. PW1 further admitted that there was undocumented agreement in respect of the servicing of the vehicle. Prosecution did not also challenge accused person's contention that he had to use part of the proceeds to service the vehicle. prosecution fails to establish before the court that exact amount that accused purportedly appropriated from the car rental proceeds.

This notwithstanding, in exhibit A, investigation caution statement of accused taken on 6/11/2018, accused admitted using four months car rental proceeds to defray a debt he owed at his former work place and giving two months cheques to the husband of PW1. Accused in exhibit B, his charge statement dated 8/11/2018 relied on the content of exhibit B.

It has been held in the case of **State v. Otchere**, supra that *“A confession made by an accused person of the commission of a crime is sufficient to sustain a conviction without any independent proof of the offence having been committed by the accused.”*

Also in the case of **Billa Moshie v. The Republic** [1977] 2 GLR, 418, CA, in its holding 2 stated:

*“A conviction could quite properly be based entirely on the evidence of a confession by a prisoner, and such evidence was sufficient as long as the trial judge inquired most carefully into the circumstances in which the alleged confession was made and was satisfied of its genuineness”*

Accused in his evidence on oath claims that he was overwhelmed by his arrest and detention and could not properly account for the money when questioned. It is interesting to note that counsel represented Accused throughout trial. During Case Completion plan and evidence in chief of PW2 when exhibit A and B were tendered, counsel for accused never raised any objection whatsoever to the admissibility of the said exhibits. Also from the cross-examining of Pw2 by counsel for accused, the content or admissibility of exhibit A was never brought up.

**Section 6 (1) NRCD 323** provides that in an action, and at every stage of the action, an objection to the admissibility of evidence by a party affected by that evidence shall be made at the time the evidence is offered. It has been held also in the case of **State v Otchere** [1963] 2 GLR at holding 4 that *“Where counsel for an accused person is*

instructed that a confession has been obtained in circumstances which violate the fundamental requirements of admissibility, it is the duty of the counsel to object to the confession going in evidence and thereby invite an adjudication by the court on the issue of admissibility. If he fails to object to its reception, he may nevertheless cross-examine prosecution witnesses in respect of the confession statement or lead evidence to establish circumstances which violate the fundamental requirements and if he succeeds in establishing such circumstances, the evidential value or weight of the confessions although already admitted in evidence, will be negligible. In this case though counsel for the first accused person did not object to the confession statement being put in evidence, he was, however, right in cross-examining prosecution witnesses to establish the inadmissibility of the confession statements.”

Exhibit A amounts to a confession by accused to dishonestly appropriating four months proceeds of the vehicle rental services. Same is certified by an independent witness.

From the totality if the evidence on record, it has been established that accused without the consent or knowledge of PW1 appropriated four (4) months proceeds of the vehicle rental services. Per the evidence of accused, the monthly proceed of the service was GHc7,260. The four months proceeds appropriated therefore amounts to GHc29,040.

The court therefore finds accused guilty of the offence of stealing the sum of GHc29,040 belonging to PW1 instead of the sum of GHc96,481 as charged. Accused is accordingly convicted on the charge of stealing forthwith.

## **SENTENCING**

In sentencing accused, the court takes into consideration the offence being a second degree felony, the amount stolen i.e GHC29,000, accused being a first time offender, demeanour, composure, comportment and punctuality exhibited by accused throughout the trial, accused being a man married with two children, refunded of GHC15,000. Accused is hereby sentenced to one-day imprisonment in addition to a fine of 250 penalty units. In default of the payment of the fine, accused shall serve a prison term of 2 years imprisonment. Accused is further ordered to refund the complainant the sum of GHC14,000 forthwith being the balance of remaining unpaid out of the proven stolen sum of GHc29,000.

**ACCUSED PRESENT**

**C/INSP. G. K. TENKORANG FOR REPUBLIC ABSENT**

**MR KWAME FOSU FOR ACCUSED PRESENT**

**(SGD)**

**H/H AFIA OWUSUAA APPIAH (MRS)  
(CIRCUIT COURT JUDGE)**