

IN THE CIRCUIT COURT, 28TH FEBRUARY ROAD ACCRA, SITTING ON
FRIDAY

THE 15TH DAY OF SEPTEMBER 2023, BEFORE HER HONOUR ELLEN OFEI-
AYEH (MRS) CIRCUIT COURT JUDGE

CASE NUMBER D4/80/2022

REPUBLIC

V

LAWRENCE NII NARKU ODONKOR@LARRY

LEGAL REPRESENTATION:

CHIEF INSPECTOR ANQUANDAH FOR THE REPUBLIC

KOFI BENTIL (ESQ) FOR THE ACCUSED PERSON

(ESQ.) KWEKU KYERE HOLDING BRIEF FOR PAAPA DARKWAH WATCHING
BRIEF FOR THE COMPLAINANT

JUDGMENT

The accused person was charged under two counts of stealing contrary to section 124(1) of the Criminal Offences Act, Act 29, 1960. The particulars of offence under count one reads;

Lawrence Nii Narku Odonkor @ Larry : a Clergy that you in the month of March

2021 at Accra in the Greater Accra Circuit and within the Jurisdiction of this court did dishonestly appropriate the sum of GHC3527.00 the property of Lighthouse Chapel International'

The accused person pleaded not guilty to the charges. The facts of the case as presented by the prosecution are that,

Complainant in this case is the Lighthouse Chapel International (LCI) represented by Christian Quinston-Addo whilst the accused person Lawrence Nii Narku Odonkor @ Larry was a bishop of LCI. Between the months of January 2020 and April 202, the accused person was the head pastor of the Akim Oda branch of the church and for that matter responsible for the day-to-day administration of the branch. As part of his responsibilities, he was to see to the payments of the Social Security and National Insurance Trust (SSNIT) contributions and the Pay As You Earn (PAYE) tax of himself and all other employees working under him. In March 2020 accused person wrote a cheque of GH¢8,527.00 dated 10/03/2020 comprising of his February 2020 salary of GH¢5,000.00, together with his SSNIT contributions and PAYE taxes of GH¢1,667.00 and GH¢1,850.00 respectively for the months of January 2020 and February 2020 and deposited same in his personal account failed to pay the SSNIT contributions and tax components of the amount drawn to the appropriate authorities and made use of same. Again in April 2020, the accused person wrote a cheque of GH¢8,527.00 dated 22/04/2021 comprising of his salary of GH¢5,000.00 for the month of March 2020, together with SSNIT contributions and taxes of GH¢1,667.00 and GH¢1,850.00 respectively for the months of March 2020 and April 2020 but

failed to pay the social security and tax components on it to their respective institutions and made use of same. The church's attention was drawn in September 2020 on the failure on the part of the accused person to pay the SSNIT contributions and taxes for the period of January 2020 to April 2020. The church was made to pay for the SSNIT contribution and taxes for the stated together with its penalties amounting to GH¢10,963.91. The case was lodged at the CID Headquarters and the accused person arrested. He admitted having signed and received the said cheques and paying them into his personal account. After investigations, he was charged with the offence and brought before this court.

At the close of the case of the prosecution, the accused person was acquitted on count two. This decision is therefore in respect of count one alone. Defence counsel filed his written address on 7/8/23.

Section 124(1) of Act 29, (1960) provides that: "*A person who steals commits a second-degree felony.*"

Section 125 of Act 29, (1960) defines stealing as; "*A person steals who dishonestly appropriates a thing of which that person is not the owner*".

Section 120(1) and (2) further explains what is meant by dishonest appropriation. Section 120(1) and (2) provides,

120. Dishonest appropriation

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 a claim of right, and with a knowledge or belief that the appropriation is without the consent of a person for whom that person is trustee or who is owner of the thing or that the appropriation would, if known to the other person, be without the consent of the other person. It is not necessary, in order to constitute a dishonest appropriation of a thing, that the accused person should know who the owner of the thing is, but it suffices if the accused person has reason to know or believe that any other person, whether certain or uncertain, is interested in or entitled to, that thing whether as owner in that person's right or by operation of law, or in any other manner; and a person so interested in or entitled to a thing is an owner of that thing for the purposes of the provisions of this Act relating to criminal misappropriations and frauds.

Section 122(6) of Act 29/60 defines appropriation as; *“Appropriation of a thing in any other case means any moving, taking, obtaining, carrying away, or dealing with a thing, with the intent that a person may be deprived of the benefit of the ownership of that thing or of the benefit of the right or interest in the thing, or in its value or proceeds or part of that thing.”*

In order to succeed, the prosecution would have to establish beyond reasonable doubt;

“That the person charged must not be the owner of the thing allegedly stolen, that he must have appropriated the thing and that there was dishonesty.” See *Ampah v The Republic* 1977 2 GLR 171, CA.

These three elements of offences and the above stated provisions have been quoted in this judgement because the defence counsel has submitted that the property being claimed belongs to the state because SSNIT and Tax Payments are not property of the church. This will be addressed this later in the judgment.

PW1; Christian Quinston-Addo testified that he is a Bishop of the Lighthouse Chapel Church for the Kasoa Branch and was the head of Missions of the Church at Oda from 2008-2019. He testified that the accused person was transferred to the Oda Branch to take over from him in January 2020, and he was one of the main signatories to the bank account and upon his transfer as the accused person had not yet reported to work, he had to ensure that blank cheques were signed and left for the incoming head of mission to enable him make withdrawals pending the change of mandate at the bank. He testified that the head of missions is the administrative head of a branch and is directly responsible for the payment of his own S.S.N.I.T contributions, that of his subordinates, as well as any other statutory payments. He testified that salaries are paid differently from statutory charges such as S.S.N.I.T and G.R.A. He testified that for auditing purposes a voucher is filled in anytime there is an expenditure within the branch, in order to give a basis for the expenditure. He added that the accounts of the Oda mission reflected that on 10th March 2020 the accused person deposited an ABSA bank cheque number 200247 belonging to complainant bearing the sum GHC 8527.00. He added that the accused person also signed the Payment voucher indicating the purpose of the deposit being the sum of GHC5000.00 as the accused person's salary for the month February 2020, GHC1850.00 as SSNIT contributions for January and February

2020 and GHC1677.00 as GRA taxes for January and February 2020. He testified that on 23rd April 2020 the accused deposited another cheque the sum of GHC8527.00 for which he signed the Payment voucher for GHC5000.00 as salary, SSF 925x2, IRS for March and April ; 925x2 and the sum total GHC8527.00, and which breakdown is contained in the said stub. He testified that at all material times the accused person was fully aware that his salary was GHC5000.00 and knew how much he was to receive by virtue of the stub he filled and signed.

He tendered the following into evidence;

Copy of bank statement-Exhibit 'A'

A copy of signed voucher-Exhibit B

A copy of stub of cheque number-Exhibit C

A copy of the stub-Exhibit D

A copy of the stub of the account-Exhibit E

Under Cross-examination the following transpired;

Q. 24. When the accused person returned from Madagascar, was he given an offer letter that his salary was GHC5000.00?

A. I am not aware of that but what I say is that Exhibit 'D' shows that the first salary accused person received which he signed for in Ghana was GHC5000.00

.....

Q26. So it means, his salary as at now is speculative and not certain

A. The accused person signed GHC5000,00 on his salary Exhibit D.

Under cross-examination, PW1 also admitted that he didn't know the net nor the gross salary of the accused person save that the accused person appended his signature against the GHC5000.00, as salary.

PW2; D/Inspector Timothy Blessed Asamoah testified that a petition was referred to him for investigations. He repeated the testimony of PW1, as well as adding that he interrogated the accused person and obtained from him a cautioned statement and a charge statement. He added that he obtained an Order for disclosure from ABSA bank where he obtained information that two cheque leaflets with number 200247 and 200248 were drawn upon by the accused on 10/3/2020 and 23/4/2020 respectively. He testified that investigations revealed that the accused person being a head pastor in charge of the Oda Branch did sign and collect SSNIT contributions and Tax Components from January to April of 2020.

Under cross examination he admitted at question 15 that;

Q15. You know that there was no document to show that this is the employment salary yet you turn around to accuse the accused person for overpaying himself by appropriation?

A. Yes, there was no such document. However, investigation revealed that, that had been the practice at the church and also when the accused was at

Madagascar and wasn't within the employment of Light House.

Q16. Are you aware that the accused person while in Madagascar was paid the equivalent of USD 1000.00

A. As I said the accused person was paid by Light House Madagascar as an Expatriate.

PW2 failed to respond in the affirmative or the negative. PW1 has also admitted that the accused person was transferred by Bishop Dag Heward Mills from Madagascar to Oda. He also admitted under cross-examination that both the church in Ghana and accused person claimed they had no terms of salary documented.

I therefore find as a fact that the prosecution has not established how much accused person was to be paid as salary, be it net or gross.

I have also considered the contents of paragraph 4 of Exhibit 'G' which makes reference to the decision of the Church, Light house Chapel International to allow accused person to collect tax component which is inconsistent with section 114 of the Income Tax Act 2015, (Act 896) which requires the employer as a withholding agent, to deduct from the income of Employee PAYE and remit to GRA. But that is not the issue before me so I shall limit myself to the charge.

On the sums designated for payment of SSNIT, PW1 and PW2 have insisted that the accused person knew he was to pay the sum added to the HR Salary to SSNIT on behalf of the Employers, whose duty it is to make such statutory

payments. Under cross-examination, PW1 denied that the sum of GHC8527.00 was the total salary of the accused person.

Clearly from the answer of PW1, the charge is based on the fact that the accused person is alleged to have written and signed payment vouchers based on what was contained on the cheque which gave the breakdown details and expenditure as salary, SSF and IRS as per the response under Question 33 under cross examination. PW2 also admitted under cross-examination that he did not know how the SSNIT computation was arrived at, nor how the PAYE arrived at.

Exhibits 'C' and 'D' bear no signatures of accused person or any other person. Exhibit 'E' the copy of the stub of the cheque bears a signature and the accused's name.

Exhibit 'E' also reflects the month February 2020.

This is distinct from the subject matter charge which particulars state on count one that the dishonest appropriation occurred in the month of March 2021. The defence tendered through PW2, into evidence Exhibit '1' the facts of the case as presented by prosecution and attached to the charge sheet and the charge sheet as Exhibit '2' filed on 2/2/2022. When challenged by the defence counsel; PW2 admitted they were typographical errors. Notably Exhibit '1' makes reference to appropriation on 10/3/2020.

In the dictum of H/L Amadu Tanko JSC, ‘ *...it must be made clear that the Respondent has not been charged under the facts but under the charge sheet*

which includes the particulars of offence. Thus, although the particulars of case as narrated by the prosecution may sound illuminating for the accused, it does not absolve the prosecution of its obligation to sufficiently and reasonably set out the particulars of the offence in the charge sheet.'

This dictum was made against the backdrop of the determination of Article 19(2)(d) of the constitution 1992 in the case of Republic v Ernest Thompson and 4 Others suit number J3/05/2020 delivered on 17/3/2021 SC. The inconsistency of dates was not challenged at the time the plea was taken. In the words of S.A Brobbey Justice (Rtd) at page 65 of his book; Trial courts and Tribunals of Ghana 2nd Edition 2001; it is sufficient for the charge to contain particulars necessary to give reasonable information as to the nature of the charge he faces.

It is my humble view that the use of the year 2021 instead of 2020 on the charge sheet and contrary to the dates contained in the facts, should be considered as a mere technicality in this case as both parties were clear in their minds that they were referring to incidents in 2020, and for that matter the defence launched the instant defence by cross-examination, without needing to request for further particulars, hence in my view that was why counsel for the defence did not raise it at the plea taking stage or thereafter.

In his defence, the accused person testified that he was initially transferred by Bishop Dag Heward Mills from Ghana in 2010 in an intra company work permit to South Africa. In 2017 he was transferred from South Africa to Madagascar. In 2020 he was transferred by Bishop Dag Heward Mills from Madagascar to

Ghana. In all of this, Lighthouse Chapel International has been headquartered in Ghana with branches across the world including Madagascar.

He adds that he belongs to the Deuteronomy level of the church per the Church Human Resource Manual titled the *Bishops Governing Handbook*, and his starting level income is USD1200.00 or more at an exchange rate of 5.7 Cedis to the Dollar at the time, and the equivalent of GHC6840.00 in February 2020. He insisted that the payment of SSNIT had always been the responsibility of the church in law and per its HR Manual, unless written instructions are expressly made to the head of mission. He testified that a month after returning to Ghana, he had not received any letter confirming his new remuneration and conditions of service, and because his previous salary was USD1000.00, he expected more than the GHc5000.00 he was given and considered the given sum to be a part-payment. He denied any such communication was given to him that GHc5000.00 was his full salary nor was he tasked by writing that he was required to pay SSNIT himself as previously done ten years earlier when he was in Wa. He testified that he was never given any guidance and written notice to pay his own SSNIT which he was aware that in some cases, certain Heads of Missions are required to pay their SSNIT and Tax. He further explained that he was asked to sign the payment vouchers and cheque stubs which were dictated to him, meanwhile the complainant church knew he could not have calculated it because he had been out of the country for over a decade.

He added that after his resignation, he asked the senior-most Bishop, Bishop Kwasi Ampofo whether he had any financial obligations to the church which

was responded to in the negative. This piece of defence is not disputed by the prosecution. Does it in any way affect intent? That will be discussed.

He adds that the allegations against him are baseless and is as a result of the civil action he took against the church for non-payment of his SSNIT. He added that it was his lawyer who informed him of the tier 1 and tier 2 pension and he was never told which fund manager he was to pay to. He tendered into evidence the following;

Intra Company Transfer permit Exhibit 1

Introductory letter- Exhibit 2 and 3

Transcript of recording Exhibit 4

Extract of Bishops governing handbook- Exhibit 5

Letter from Light House Chaple International -Exhibit 6

Email to Ps Larry Odonkor document- Exhibit 7

WhatsApp Chat, Flash drive containing Audio recording, and transcript of recording- Exhibit 8, 8A, 8A

Facebook posts made by Bishop Quinston Addo.-Exhibit 9

Under cross-examination, he admitted that he personally endorsed the vouchers and wrote GHC5000.00 himself on the vouchers, except for the January voucher which was dictated to him by Bishop Quinston. His defence is notably consistent with his cautioned statement. This has not been disputed

by the prosecution and as I have found as a fact that that the accused person's salary has not been established by the prosecution, I find it reasonably probable that the accused person was on the Deuteronomy level and to earn USD 1200.00 or more.

The accused person also admitted at question 11 of cross-examination that for January 2020 Bishop Sackey in response to a whatsapp message asked him to come to Bortainoor and there he gave him GHC5000.00 and asked him to hold on to it for now. That was the basis for him filling out the voucher in Form C.

Emmanuel Laryea testified as DW1 that he testified that he was given clear and specific guidance and written instructions on how to perform his tasks, together with an email with calculated figures and breakdowns, so all he had to do with the funds paid to him was to proceed to SSNIT office and make the payment as per the document given. He tendered into evidence the following;

A letter on IRS and SSNIT PAYMENT as Exhibit 10, and IRS monthly PAYE deductions as Exhibit 11, IRS receipts, as 11 A, 11B and 11 C, 11d and 11e respectively. Under cross-examination he insisted that all heads were initially not mandated to pay their SSNIT and IRS until additional instructions to pay came up.

DW2, Emmanuel Oko Mensah testified that he was employed by the complainant church in 2002. He explained that while he had been transferred out of Ghana, he was never required to pay his mandatory statutory deductions on behalf of the church or himself and while he was in Ghana, Light House

Chapel - Ghana paid his SSNIT and PAYE as required by Law he tendered into evidence Exhibit 12, the Amended Statement of Defence and counterclaim of defendant filed on 21/4/23, in suit number IL/0075/2021.

PW1 has insisted that the accused person as Bishop and head of mission doubles as administrative head and ought to know how to compute his tax returns. This allegation has been denied by the accused person. He does not deny being the head of mission. Exhibit 12 tendered by DW2, which is the complainant church's amended statement of defence and counterclaim in suit number IL/0075/2021, provides otherwise that the church had been making statutory payments for him. DW2 testified that he was never required to make statutory payments. Having not disputed this piece of testimony, I therefore find as a fact that not all heads of missions were mandated to pay their PAYE and SSNIT unless there were clear directives to that effect. Has prosecution proved that accused person was one of the heads of mission who were given such clear directives?

I have considered the entire evidence on record. I find as a fact that the accused person remained in the organization, Light House Chapel International, for which he had been transferred from Madagascar to Ghana. I find as a fact based on The Copy of the Bishops hand book that he was entitled to the sum of USD 1200.00 equivalent in Ghana Cedis. Prosecution bore the burden to prove that the accused person was entitled to a net or gross salary of GHC5000.00 at the time and has relied on Exhibits 'B and 'C. The market rate for the dollar in March 2020 can easily be ascertained by judicial notice as GHC5.65 at the

dollar. The accused person further explained that he had been transferred out of Ghana for ten years and his salary had changed.

Counsel for the accused person has submitted in his address that the property; i.e the appropriated sum, does not belong to the church and it was the State and GRA that was tasked with collecting same, and for that matter complainant cannot pursue unpaid taxes for that matter. Section 120(2) of the Criminal Offences Act, Act 29 is quite instructive that, the accused person knows or believes that some other person, whether certain or uncertain is interested in or entitled to that thing whether as owner in that person's right, or by operation of law or in any other manner.

In respect of a claim of right as argued by counsel, the evidence is clear that the sums described as SSF and IRS on Exhibit 'B' and 'C', were for a purpose;

PW1 testified that it was for auditing purposes. Again on the face of Exhibit 'C' it was for the accused person to obtain the funds as described. This, I find as a fact, was not paid to SSF or IRS as described on Exhibit 'C'. From the entirety of the evidence on record I find that there was an appropriation of the sum of GHC1687.00 using the USD1000.00, which he was receiving, at the exchange rate at the time. I also rely on the decision in *Obeng @Donkor v The State* 1966 GLR 259 that the quantum sum stolen does not matter.

On the second element of offence, was the appropriation dishonest?

Learned Counsel for the accused person has discussed mens rea and actus reus in detail and quite elaborately. The sum of GHC8,527.00 less GHC6840.00

is the sum less GHC1687.00. He denied signing GHC5000.00 as his salary, and he knew it was the church's responsibility to pay taxes and SSNIT, so he would not have reported the church to SSNIT if he had knowingly stolen his own benefits. He added that after his resignation, he asked the senior-most Bishop, Bishop Kwasi Ampofo whether he had any financial obligations to the church. His defence is that if the salary was GHC5000.00 being the net salary then the computation of SSNIT and IRS is wrong. Notably Exhibit B does not indicate whether the salary is gross or net, and he was not informed of which fund manager to pay to. I have also considered DW1 and 2's testimonies in this regard and not being challenged, I find as a fact that unless clearly directed, by the church, not all mission heads were mandated to pay their PAYE and SSNIT. In light of the defence of the absence of such directives, the absence of knowledge as to where to pay the said sums against the backdrop of being underpaid, I consider the element of intent.

The mental element (*mens rea*) is very important for one to be convicted of the offence of stealing. In the case of Antwi v The Republic [1971] 2 GLR 41, it was reiterated that the prosecution must prove that the accused committed the act with the intention that some person may be deprived of the benefit of his ownership, or the benefit of his right or interest in the thing, or in its value or proceeds. Therefore, in the absence of the mental element of the intention to steal, the offence of stealing will not suffice.

I also rely on the case of R v Akpabio 1944 10 WACA 181 where it was held that the mere retention of a sum of money for a long time did not amount to stealing because there was no intent to defraud. I have considered the evidence of the

accused person in his defence. I do agree with the decision in Lutterot v C.O.P [1963] 2 GLR 429, S.C at holding 3, where their Lordships set out the threetier test a court must use to examine the case of the defence in Criminal cases, as follows;

(3) In all criminal cases where the determination of a case depends upon facts and the court forms the opinion that a prima facie case has been made, the court should proceed to examine the case of the defence in three stages;

If the explanation of the defence is acceptable, then the accused should be acquitted,

If the explanation is not acceptable but reasonably probable, the accused should be acquitted.

If quite apart from the defence' explanation, the court is satisfied on a consideration of the whole evidence that the accused is guilty, it must convict.

Having considered the defence which I find is reasonably probable, and as I find the absence of intent, I acquit the accused person on count one. He is discharged.

.....SGD.....

HH Ellen Ofei-Ayeh(Mrs)

