

**IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON FRIDAY  
THE 13<sup>TH</sup> DAY OF OCTOBER, 2023 BEFORE HER HONOUR ENID  
MARFUL-SAU, CIRCUIT COURT JUDGE**

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CASE NO. D9/27/2023

**THE REPUBLIC**

**VRS.**

**ABRAHAM EFFEH SARPONG**

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*ACCUSED: PRESENT*

*PROSECUTION: DSP. HANSON ARMAH PRESENT*

*NO LEGAL REPRESENTATION*

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**JUDGMENT**

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The Accused person is charged with one count of Unlawful Entry contrary to Section 152, one count of Causing Unlawful Damage contrary to section 172(1)(b) and one count of Stealing contrary to Section 124 all of the Criminal Offences Act, 1960 (Act 29).

The facts as presented by Prosecution are that the complainant who is a caretaker of a three-bedroom self contained apartment at Treba visited the said building on 9<sup>th</sup> April, 2023 at 1:30pm and found the Accused in the building removing installed electrical cables. The Accused was arrested and based upon these facts he was arraigned before this court.

Prosecution called two witnesses in support of its case. PW1 was Charles Acheampong and PW2 was the Investigator PW/Sgt Benedicta Frimpong.

PW1 testified that he lives at Burma Camp and that on 9<sup>th</sup> April, 2023 at about 1:20pm he received a call from a caretaker of his site that he went out and upon his return he heard some sound in the house so he opened the door and found the Accused inside cutting the electric cables. He says that the caretaker held him and called for help and the neighbours came and sent the accused to the Police Station. He tendered the following documents:

- Exhibit A: Statement to Police
- Exhibit B Series: Photographs

PW2 testified that on 9<sup>th</sup> April, 2023 at 1:30pm PW1 reported a case of unlawful entry, causing damage and stealing against the accused so he took a Statement from him and a witness called Gideon Yaw Owusu. He testified that on the same day the Accused was arrested and investigation cautioned statement was obtained from him. According to him, his investigation revealed that PW1 owned an uncompleted building at Treba and on 9<sup>th</sup> April, 2023, his caretaker Gideon Yaw Owusu visited the building and saw the Accused in the ceiling causing damage to the electrical cables of the building. He stated that the Accused gained access into the building through the open ceiling from outside the building. PW2 tendered the following documents:

- Exhibits C & C1: Charge Sheet and Brief Facts
- Exhibit D: Investigative Caution Statement
- Exhibit E: Charge Caution Statement
- Exhibit F: Statement of Hosu Gideon Yaw

At the close of Prosecution's case, the Accused was called upon to open his defence to the charges levelled. On 25<sup>th</sup> September, 2023, when the accused was told of his right under the law, either: (1) to stand in the dock and say nothing; or (2) to make an unsworn statement from the dock whereupon no one will question him; or (3) to go into the witness box and give evidence on oath, he chose to make an unsworn statement from the dock.

Accused made his statement from the dock on 25<sup>th</sup> September, 2023. He stated that he did not steal any cables belonging to PW1. According to him, on the said date, the weather was cloudy, and he needed a place to hide from the rain so he found an uncompleted building and an ungated structure. He says that he was hiding there when he came to meet him there, but he was not there with intent to steal. He stated that they said to him that their cables were stolen and damaged and since he had been found, then he is responsible. He indicated that when he was arrested, he was given three options, either he would be beaten up, they will kill him, or they will take him to the police station so he pleaded that he knew nothing about the allegation so he should be taken to the Police Station. He stated that he was sent to the Police and granted bail and his master approached the complainant to have the matter settled since the allegation was that cables were destroyed in order for him to pay the sum involved but the complainant insisted that the case is brought to court, so he was arraigned.

As already indicated, count 1 is a charge of Unlawful Entry. Section 152 of Act 29 provides as follows:

*“A person who unlawfully enters a building with the intention of committing a criminal offence in the building commits a second degree felony.”*

Section 153 of Act 29 also provides as follows”

*“153. Explanation as to unlawful entry*

*A person unlawfully enters a building if that person enters otherwise than in the exercise of a lawful right, or by the consent of any other person able to give the consent for the purposes for which that person enters.”*

The particulars of offence indicate that the Accused entered the building of Gideon Yaw Owusu with the intent to steal. The Accused person does not dispute that he entered the building, he stated that he was there to shield from the rainy weather and not to steal the cables as indicated. As count 3 is a charge of Stealing, I shall proceed to consider count 3 in order to determine count 1.

Count 3 is a charge of Stealing contrary to Section 124(1) of Act 29. Section 125 of Act 29 defines stealing as follows:

*“A person steals who dishonestly appropriates a thing of which that person is not the owner.”*

The definition of Stealing therefore requires the prosecution to prove the following elements:

1. Appropriation of a thing;
2. It was dishonest;
3. The thing belonged to another person

The Particulars of Offence indicate that on the 9<sup>th</sup> day of April, 2023 the Accused stole electrical cables valued at GH¢15,500.00 being the property of Gideon Yaw Owusu. It is apparent from PW1’s evidence that he was not present in the building when the Accused person was found therein. Indeed, from his own testimony before this court, it was his caretaker who is said to have seen the Accused person allegedly cutting cables. The Accused on the other hand has denied cutting the said cables and indicated that he went into the property to shield from the rainy weather. The Accused stated that he was told by the person who found him that their cables were stolen and damaged and since he had been found, then he was responsible. During cross examination of PW1 by Accused the following ensued:

**Q:** I put it to you that Yaw did not meet me cutting cables

**A:** Yaw is my caretaker and he called me and he caught him in the act so there is evidence to show that he indeed cut the cables.

**Q:** I put it to you that the building has no ceiling, and the cables were already damaged before I entered

**A:** The building has no ceiling, but the cables were intact and where we caught him all the cables were intact and there's evidence to show that the cables were in a polythene bag belonging to the Accused and his slippers too.

**Q:** I put it to you that there was no polythene bag when I was arrested

**A:** If he says so

**Q:** I put it to you that when I was arrested, they claimed that someone earlier came to the house and destroyed electrical cables so I was the one.

**A:** That is so

**Q:** Have you ever seen me in the area packing electrical cables

**A:** No”

From *Exhibit F* which is the Statement of Hosu Gideon Yaw, he indicates that he saw the Accused removing electrical wires and this was the second time such a crime had happened on their premises. This confirms the testimony of the Accused as well as PW1. However, Exhibit F was not made on oath therefore has little probative value, yet the author of Exhibit F did not appear before the court to testify.

In the case of **ADAM v. THE REPUBLIC [1992] 2 GLR 150** it was held as follows:

*“In a criminal prosecution a "material witness" was one whose evidence would help the court decide on the ingredients of the charge before it or whose evidence would help remove any doubt that might exist in the prosecution's case, or whose evidence would help displace any reasonably probable defence that the accused might have. Accordingly, a material witness was necessarily a witness for the prosecution and not the defence since the prosecution assumed the burden of proving guilt., However the prosecution could refuse to call a material witness if he would not speak the truth; or his evidence would negative that of the prosecution and strengthen that of the accused; he was a close relative of the accused; or his identity was not sufficiently*

*established to enable the prosecution contact him before the trial, or he could be an accomplice or co-accused; or there were several witnesses who could testify on the point...”*

Also, in **TETTEH V. THE REPUBLIC [2001-2002] SCGLR 854** it was held as follows:

*“The prosecution as a general rule, had the discretion to present such witnesses as it elected to call in support of its case. But the discretion must be exercised in a manner that would further the interests of justice and ensure fairness to the accused so that he did not suffer any disadvantage. However, whether or not a witness was a material witness, would depend on the quality and content of the evidence he was expected to offer in relation to the case on trial. The witness would be deemed to be material if the evidence expected from him was deemed to be so vital as to be capable of clearly resolving one way or the other an important and decisive issue of fact in controversy. The evidence must appear likely to have a profound impact on the facts of the case to the extent that, if it was accepted as true, it would compel the court to come to a conclusion that was different from the decision it had taken. The prosecution also had the right to decide who were his material witnesses...”*

On the prosecution's evidence the said Gideon Yaw Hosu was alleged to have been the only one who saw the Accused removing the said cables from the building therefore there was no justification why they failed to call him to ascertain, inter alia, where he saw the accused, what he was doing and whether or not the Accused had cut and packed cables in a polythene bag belonging to him with his slippers. These were material facts which only the evidence of the said Yaw could have helped the court resolve.

There is no evidence before this court substantiating the allegation of stealing against the Accused. In fact, the photographs tendered as Exhibit B series are not weighty pieces of evidence as Exhibit B shows an open roof with wires hanging and Exhibit B1 shows some wires on a bare floor with a bucket. These in themselves are not sufficient to establish that it was the Accused who cut and placed the wires there. This is especially so when PW1 has himself admitted that someone had earlier been to the house to destroy the cables.

In the case of **DOCHIE v. THE STATE [1965] GLR 208** it was held as follows:

*“Evidence given from the dock was entitled to consideration by the court, even though the weight to be attached to it was necessarily small, and failure to go into the witness-box must not be interpreted as a corroboration of the case for the prosecution.”*

Though Exhibits D and E contain admissions by the Accused person of cutting the cables, he denied the allegations during trial. The Accused person’s statement is one made from the dock nevertheless, the court is bound by law to consider it.

In **ADAM VRS. THE REPUBLIC** (supra) the court held further as follows:

*“Where the defence of an accused in a criminal trial went beyond a mere denial, it became the duty of the trial court to consider it and rule on its acceptability or otherwise with reasons. And where the judge disbelieved the case of the accused he was obliged to consider whether the accused’s story was reasonably probable.”*

Also, in **TETTEH VRS THE REPUBLIC** (supra) it was held by Adzoe JSC as follows:

*“...if indeed, there were material witnesses which prosecution did not call in support of the case against the appellant; for the law was well settled that the failure means that the case against the appellant was not proved beyond reasonable doubt.”*

In the instant case, Accused person’s defence is that he merely went into the building to shield from the rainy weather and not with an intent to steal. Accused person’s evidence that the said property was an uncompleted building, and an ungated structure remains undisputed and is in fact confirmed by PW2 that the said building is an uncompleted building. I therefore consider that it is reasonably probable for a person to take refuge in an ungated and uncompleted building when the weather is rainy. I therefore find that the evidence of Accused reasonably probable. In any case, I find that the charge of stealing completely fails. In the absence of evidence that the Accused was in the said property to steal, I find also that count 1 which is a charge of unlawful entry to steal fails as well.

Count 2 is a charge of Causing Unlawful Damage. Section 172(1)(b) of Act 29 provides that:

*“(1) A person who intentionally and unlawfully causes damage to property  
(b) to a value exceeding one million cedis commits a second a degree felony.”*

The particulars of offence indicate that the Accused intentionally and unlawfully caused damage to electrical cables valued at GH¢15,500.00 which is said to be the property of Gideon Yaw Owusu. As already mentioned in this decision, though photographs have been tendered depicting hanging wires from a ceiling and some wires on the floor, there is no evidence to show that it was the Accused who caused the said destruction. Again, the person who claims to have seen the Accused causing the said damage was never called upon to testify on oath to afford the Accused the opportunity to cross examine him on his evidence. It is trite law that the degree of proof in a criminal case such as this is proof beyond reasonable doubt. The standard of proof beyond reasonable doubt was explained by Lord Denning in the case of **MILLER V PENSIONS (1972)2 ALL ER 372** as follows:

*“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. If the evidence is strong against a man as to leave a remote possibility in his favour which can be dismissed with the sentence of course it is possible but not the least probable, the case is proved beyond reasonable doubt, but nothing short of that will suffice.”*

Also, in **RICHARD BANOUSIN VRS. THE REPUBLIC CRIMINAL APPEAL No: J3/2/2014 18<sup>TH</sup> MARCH 2014; SC** it was held as follows:

*“It is the duty of the prosecution to prove the guilt of the accused beyond reasonable doubt in all criminal cases.*

*What “beyond a reasonable doubt” means is that, the prosecution must overcome all reasonable inferences favouring innocence of the accused. Discharging this burden is a serious business and should not be taken lightly. The doubts that must be resolved in favour of the accused must be based on the evidence, in other words, the prosecution should not be called upon to disprove all imaginary explanations that established the innocence of the accused.”*

I find that Prosecution has failed to discharge the burden of proof imposed by the law as the doubts arising in the case should inure to the benefit of the Accused. The Accused is hereby acquitted on Counts 1, 2 and 3.

**(SGD.)**  
**H/H ENID MARFUL-SAU**  
**CIRCUIT JUDGE**  
**AMASAMAN**