

IN THE CIRCUIT COURT HELD AT DANSOMAN, ACCRA ON  
WEDNESDAY, THE 31<sup>ST</sup> DAY OF JULY, 2023 BEFORE HER HONOUR  
HALIMAH EL-ALAWA ABDUL BAASIT, CIRCUIT COURT JUDGE

SUIT NO.: CCD/CC8/21/23

THE REPUBLIC

VS

THOMAS KODZO

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**PARTIES:**

ACCUSED PERSON – PRESENT

CHIEF INSPECTOR WONDER FOR THE REPUBLIC – PRESENT

**COUNSEL:**

NO LEGAL REPRESENTATION

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**RULING ON WHETHER A PRIMA FACIE CASE HAS BEEN MADE BY  
THE PROSECUTION**

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**Background:**

The Accused Person was charged with the offence of Stealing: Contrary to Section 124(1) of the Criminal and Other Offences Act, 1960 (Act 29). The brief facts of the matter as incorporated from the Charge Sheet are as follows; *“Complainant Matilda Bremansu is a trader and lives at Kamara near Dansoman. Accused Thomas Kodzo is a designer of Plaster of Paris (P.O.P) and lives at Bortianor. During the month of February 2023, Complainant engaged the accused to mould and fix P. O. P. and corner design mould for her at her site at Tunga-Dansoman. Complainant duly paid for the charges accused person charged her. Complainant trusted accused hence she does not visit the site regularly. Later when complainant went to the site at Dansoman Tunga Down to check on the progress of the work, she realized that the accused has collected some of her mould products to*

*another site to fix some for his client without her consent. Complainant confronted the accused person who admitted having used the materials to work on another person's site. Accused admitted his offence and promised to pay complainant all the materials worth Ghc10, 000.00 which he stole from her site. Whilst the case was under investigation, accused person was granted police enquiry bail to be reporting weekly, however, after he reported twice accused person went into hiding. Police fell on the surety who had information that the accused was hiding at Nkawkaw in the Eastern Region. Surety went to Nkawkaw where with the help of Nkawkaw Police, accused was re-arrested and brought to Dansoman. After investigation, accused was charged with the offence of stealing and arraigned before this honorable court".*

### **The Plea**

On the 10<sup>th</sup> of day of May, 2023, the Accused Person pleaded not guilty to the offences after same was read and explained to him in the Twi Language. The Prosecution assumed the burden to prove the guilt of the Accused Person beyond reasonable doubt. To prove their case, the Prosecution called Three (3) Witnesses and tendered in evidence the following;

1. **Exhibit "A"** - Statement of PW 1 to the Police;
2. **Exhibit "B"** - Statement of PW 2 to the Police;
3. **Exhibit "C"** - Caution Statement of the Accused Person;
4. **Exhibit "D"** - Charge Statement of the Accused person;
5. **Exhibit "E"** - Further Caution Statement of Accused Person

At the close of the case of the Prosecution, the Court has to determine whether the Prosecution has established a prima facie case against the Accused Person to require him to open his defence.

### Determination

Article 19(2) (c) of the Constitution 1992 provides that '*a person charged with a criminal offence shall be presumed innocent until he is proved or has pleaded guilty*'. Apart from strict liability offences, the general rule is that, throughout a criminal trial, the burden of proving the guilt of the accused person remains on the Prosecution. (See **Asante vs. The Republic** (1972) 2 GLR 177). An accused is generally not required by law to prove anything, he is only to raise reasonable doubt in the mind of the Court as to the commission of the offence to secure an acquittal. (See **COP vs Antwi** (1961) GLR 408 SC; **Bruce Konua vs The Republic** (1967) GLR 611).

The Accused Person herein is charged with the Offence of Stealing contrary to **section 124(1)** of the Criminal Offences Act, 1960 (Act 29) of which the Act 29 defines as '*A person steals who dishonestly appropriates a thing of which that person is not the owner*'. Authorities have further defined stealing as the dishonest appropriation of property belonging to another with the intention of permanently depriving the other of it. The Court shall examine the evidence of the Prosecution to establish whether or not a prima facie case has been made out against the Accused Person.

### Evidence of Witnesses

The first Prosecution Witness (PW1) was the Complainant, Matilda Bremansu, a business woman who lives at Camara, Dansoman-Accra. She testified that about 2 months ago, she met and employed the services of the accused to mount P.O.P. in her uncompleted building of which he charged her Ghc24, 500.00 and same was paid to him. The accused did the work up to a level and started 'playing games' as he refused to continue or complete the work and further blocked her calls. Sometime later, she discovered that the accused was

stealing her materials, she then told the Caretaker to be vigilant and he was subsequently caught stealing 8 P.O.P. plaster board, four corner mould, 2 bucket of home charm paint, which he sent to the next 2 uncompleted house. When the caretaker informed her of this, she immediately lodged a complaint at the police station and after the accused was arrested, the accused's brother and his apprentice informed her that the accused person brings some of her materials to Kokrobite and Tunga for sale.

PW 2 is Isaac Ninkyi, a painter, lives at Tunga Down, Dansoman-Accra and PW1 is his 'madam'. He testified that on the 1/4/23, accused person's apprentice told him that his master stole 2 buckets of home charm paint to town and sold them. On the 6/4/23, he saw the accused person holding 8 P.O.P. plaster board and four corner mould and he took a picture of him whilst he was holding the items. At about 1.50pm, he called his madam on phone and informed her of which they lodged a complaint at the police station.

PW3 is PWD/SGT. Lydia Sarpong who testified that on 5/6/2023, whose testimony was a repetition of the testimony of PW1 and PW2 but added that she visited the scene and investigation revealed that some parts of the building had been mould whilst other parts are uncompleted. She testified further that she visited the next 2 uncompleted building and found the stolen corner mould board of which the accused person was then arrested. She concluded her testimony by stating that whilst the case was under investigation, accused person was granted police enquiry bail to report weekly but he went into hiding and was rearrested with the help of the Surety.

## **Analysis**

The duty of the Court at this stage, is to determine whether the Prosecution has been able to establish a prima facie case against the Accused Person. In other words, the Prosecution, per their witnesses and evidence before the Court, must establish that the Accused Person indeed committed the offences he has been charged with. Regarding the burden of proof, section 11(2) of the Evidence Act, 1975 (NRCD 323) provides that '*...in 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 a fact beyond reasonable doubt*'. In the case of **Kwabena Amaning Alias Tagor and Anor. vs The Republic** (200) 23 MRLG 78, the Court held that: "*prima facie evidence is evidence, which on its face or first appearance, without more, could lead to conviction if the accused fails to give reasonable explanation to rebut it ... What the trial Court has to find out at this stage that the Prosecution has closed its case is **whether or not the evidence led has established all the ingredients of the offence charged for which the accused person could be convicted if he failed to offer an explanation to raise doubts in the said evidence***".

Per the record before this instant Court and on the totality of the evidence led by the Prosecution and the oral testimonies of the Prosecution witnesses particularly the testimony of PW2 which sought to corroborate the testimony of PW 1 that the some items including 4 corner moulds belonging to PW 1 were stolen. In the case of **Ekow Essuman vs The Republic**, [2016] DLHC 9242, the Court held that "*where the Court has ruled that there was a prima facie case made out and the accused person was to enter into his defence, it does not mean that the accused was guilty. It simply means that the evidence on record as led by the Prosecution has gone beyond mere allegations or speculation that calls for some clarification or explanation, as it were, from the accused person. It is after the accused person has given his side of the story that the Court will be seised with jurisdiction to pronounce whether*

*he is guilty or not. In other words, it is only at the stage where the accused has offered evidence in rebuttal of the Prosecution's case that the Court can make findings of facts".*

### **DECISION**

In the circumstances, the totality of the evidence led by the Prosecution, the Court finds that a prima facie case of stealing has been made out against the Accused Person to warrant calling upon him to open his defence so as to give his side of the story to raise a reasonable doubt in the case of the Prosecution. The Accused Person shall prepare to open his defence.

**H/H HALIMAH EL-ALAWA ABDUL-  
BAASIT.  
CIRCUIT COURT JUDGE**