

IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON THURSDAY, 9th DAY OF NOVEMBER 2023 BEFORE HIS HONOUR KWABENA KODUA OBIRI-YEBOAH, CIRCUIT COURT JUDGE.

D4/83/2023

THE REPUBLIC

VRS

LUMOR WISDOM EDEM ABODAKPUI

JUDGEMENT

The accused was arraigned before this court on two counts of Stealing: contrary to section 124 (1) of criminal offences Act, 1960, (Act 29).

Particulars of the offences were:

1. LUMOR WISDOM EDEM ABODAKPUI, Supervisor, Age 38 years: For that you between the years 2018 and 2021 at Tudu/Accra in the Greater Accra Circuit and within the jurisdiction of this court did dishonestly appropriate cash the sum of GHC 1,635,828.00 the property of Rootsenaf Gas Company.
2. LUMOR WISDOM EDEM ABODAKPUI, Supervisor, Age 38 years: For that you between the years 2018 and 2021 at Tudu/Accra in the Greater Accra Circuit and within the jurisdiction of this court did dishonestly appropriate cash the sum of GHC 86,600 the property of Rootsenaf Gas Company.

The prosecution had to prove the ingredients of this offences. For instance, to establish the offence of stealing, the prosecution is required to prove the three elements of: (i) dishonesty; (ii) appropriation; and (iii) property belonging to another person: see **Republic v. Halm and Ayeh-Kumi, Court of Appeal (full bench), 7 August 1969,**

unreported; digested in (1969) C.C. 155, John Cobina v The Rep. NO. J3/07/2019
delivered on 19TH FEBRUARY 2020.

Section 125 defines the offence thus: "A person steals who dishonestly appropriates a thing of which that person is not the owner". To prove the offence of stealing it is required of the prosecution to prove these ingredients of the offence, namely:

- a. The accused is not the owner of the thing.
- b. The accused appropriated it.
- c. The appropriation is dishonest.

This is how the principle was captured by Abban, J as he then was in the case, **Ampah and Another v The Republic (1976) 1 GLR 403 @ 412**, Section 125 of Act 29 defines stealing as follows: "A person steals if he dishonestly appropriates a thing of which he is not the owner." So that the basic ingredients which ought to be proved in a charge of stealing by the prosecution are, firstly, that the accused was not the owner of the subject-matter of the charge; secondly, that he appropriated the subject-matter of the charge and, thirdly, that the appropriation was dishonest. If these three essential elements are proved to the satisfaction of the court, the court will be bound to convict unless the accused is able to put forward some defence or explanation which "can cast a reasonable doubt" on the case for the prosecution. **See also Ampah v The Republic (1977) 2 GLR 171, CA, Lucien v The Republic (1977) 1GLR @ 351.**

To put it in another form, to establish the offence, the prosecution is required to prove only the three elements of: (i) dishonesty; (ii) appropriation; and (iii) property belonging to another person: see **Republic v. Halm and Ayeh-Kumi, Court of Appeal (full bench), 7 August 1969, unreported; digested in (1969) C.C. 155. See also Brobbey and others v The Rep (1982-82)1GLR 608, Anang v The Republic (1984-86) 2 GLR 458, Aning v The Republic (1984-86) 2 GLR 85,**

In this case it is the duty of the prosecution to prove their case, and in a criminal action, must be, beyond reasonable doubt. Sections 11 (2) of the Evidence Act 1973, NRCD 323 states that: "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 the totality of the evidence a reasonable mind could find the existence of the fact beyond a reasonable doubt"

And section 15 of the same Act, "unless it is shifted

- (a) The party claiming that a person committed a crime or wrongdoing has the burden of persuasion on that issue"

The accused pleaded not guilty to the charges and therefore it is the duty of the prosecution to prove the guilt of the accused as mandated by section 11 of the Evidence Act, 1975, NRCD 323 which states: "In a criminal action, the burden of producing evidence when it is on the prosecution as to a fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on the totality of the evidence a reasonable mind could find the existence of the fact beyond reasonable doubt". See **Oteng v The State (1966) GLR 355**

In the case of Domena v Commissioner of Police (1964) GLR 563 @ 568 it was put this way: "Our law is that by bringing a person before the court on a criminal charge, the prosecution takes upon themselves the onus of proving all the elements which constitute the offence to establish the guilt of the defendant beyond reasonable doubt, and that onus never shifts. There is no onus upon an accused person, except in special cases where the statute creating the offence so provides; stealing is not covered by such a statute. (see Wilmington v DPP (1935) AC 462; Bater v Bater (1951) All ER 458.

It is also trite law that in a criminal case, when an accused pleads not guilty to an offence, pursuant to S.11 (2) of the Evidence Act, 1975 (NRCD 323), *the burden of proof is on the*

prosecution; and the **standard of proof** has to be **beyond reasonable doubt** as stated by **Section 13(1) of the Evidence Act, 1975 (NRCD 323)** and affirmed in the case **DARKO v THE REPUBLIC** [1968] GLR 203. There is no burden on the accused. See: **COP v Isaac Antwi (1961) GLR 408 @ 412, Nkansah v The Republic (1980) GLR 184**

The case of the prosecution per the facts attached to the charge sheet is that the Complainant Frederick Evans Martey is the Accounts and Administrative Manager of Rootsena Gas Company Limited a Liquefied Petroleum Gas (LPG) company located at Tudu, Accra. Accused Lumor Wisdom Edem Abodakpui is the supervisor of the said company. The accused person is responsible for the day-to-day operations of the firm as well as depositing money into the company's bank accounts.

In December 2021, the company detected that the accused person used November 2021 bank pay in slips to support October cash sales and could also not account for sales in October 2021. The company further detected that the accused sold 7 tankers of Liquefied Petroleum Gas (LPG) of about 27000 kilograms but failed to account for same. Upon questioning, the accused could not give any satisfactory response. Thus, on 18th May 2022, the complainant reported the matter to police and the accused was subsequently arrested to assist investigations. The accused person in his investigation caution statement denied misappropriating any amount of money. In the course of investigation an external audit firm, Kissi Consult was engaged to conduct an independent audit into the company's accounts. After the audit, it was established that, the accused person had misappropriated cash the sum of One Million Seven Hundred and Twenty – Two Thousand Four Hundred and Twenty -eight Ghana Cedis (GHC 1,722,428.00). After the close of investigation, the accused was charged with the offence as stated in the charge sheet and arraigned before this court.

The point ought to be made that initially the accused was arraigned before this court with one charge of stealing the amount as stated in the fact. In the course of the proceedings

of the case before the court, the prosecution amended the charge sheet and separated the amount as stated in the particulars of offence above. Prosecution however maintained the facts as attached to the previous charge sheet and hence the same amount as stated in the facts as a lump sum. The plea of the accused was therefore taken on the two charges per the amendment of the charge sheet, and he pleaded not guilty to both charges.

Once the accused pleaded not guilty, the prosecution had the responsibility to prove their case against the accused. The prosecution in seeking to do that indicated at the Case Management Conference that they were going to call four witnesses. The first witness of the prosecution was Frederick Evans Martey, the complainant, who gave evidence as PW1. PW1 gave evidence to the effect that he is an account Officer and Consultant at Rootsena Gas Company Limited. He said he knew the accused as the supervisor of the Tudu, Accra branch of the Company who was employed about (7) years ago as a pump attendant.

PW1 said the accused is now the supervisor since December 2018. PW1 said the duties of the accused as the station supervisor was to receive all gas consignments sent to the station and lodge all cash sales into the company's bank accounts. PW1 then gave further account of the accused person's work schedule in the company. PW1 said, he detected that, the accused had received seven tankers loads of gas, but no sales summary reports were submitted to the head office with corresponding bank deposit slips. PW1 said he informed the Managing Director (PW2) of the Company, his findings at the Tudu Station, and he queried the accused and copied the Managing Director (PW2).

PW1 said further that on 2nd January 2022, he received a response to the query from the accused which he did not give a satisfactory response to the issues raised in the query letter. PW1 said upon the unsatisfactory response, the company then engage external audit firm, Kissi Consult to conduct audit into the accounts books of Tudu station from 1st December 2018 to 23 November 2021 when the accused person assumed the role of a

supervisor. PW1 said there was an interim report from Kissi Consult and based on that they reported the matter to CID Headquarters for investigation. PW1 said further that during the pendency of the police investigations the auditors continued the audit process and submitted a final report. PW1 said the final report, showed that the accused person had stolen cash in the sum of GHC 1, 635, 828.00.

The prosecution called PW2, Mr. Edmund Fleischer, the Managing Director/Chief Executive Officer of the Company, as the second witness, and he gave evidence in support of the case of the prosecution. PW2 said the company is an established oil marketing company in Ghana and has a number of gas filling stations dotted across Ghana. PW2 said in paragraph 7 of his witness statement that, the accused person as the supervisor of the station, he is to receive all gas consignment sent to the station and lodge all cash sales into the company's accounts with the GCB Bank, UBA bank or SSG Bank. PW2 said the accused person has been performing this function since the year, 2018 until recently when his cash book at the Tudu station was checked by the newly engaged accountant/Administrative Manager in the person of Mr. Frederick Evans Martey (PW1).

PW2 said further, the accountant/administrative Manager found that seven (7) truckloads of liquefied petroleum Gas (LPG) supplied to the Tudu branch could not be accounted for by the accused. The loads included load numbers: 235, 236, 237, 238, 239, 240 and 241 respectively. PW2 said PW1 informed him of the shortfalls and unaccounted funds/loads and then queried the accused person. PW2 said in paragraph 11 that the accused responded to the query and copied his office but the responses to the query did not answer the query and were not satisfactory.

PW2 said the company then decided to engage external auditors to conduct an audit into the accounts book of Tudu Station from 1st December 2018 to 23rd November 2021 which period he said, the accused assumed duty of the role of supervisor at the station. PW2 said further that his company engaged Kissi Consult, an audit firm, and their interim and

final report indicated that the accused has stolen over GHC 1,635,828.00 and they reported the matter to the police. PW2 concluded by saying that the accused who was supervisor at his Tudu gas Station has dishonestly appropriated cash the sum of GHC 1,635,828.00 without his consent leading to his indebtedness to his suppliers, Ghana Revenue Authority, and other statutory bodies of government.

Prosecution called PW3 who was a Chartered Accountant and representative of Kissi Consult an audit firm engaged by the company of PW2. PW3 said that they were per letter, to conduct an audit into cash operations at Tudu Retail Outlet for the period 1st December 2018 to 23rd November 2021. PW3 said the accused confirmed that the total cash sales for the period 1st December 2018 to 23 November 2021 was GHC 33,051,840.00. PW3 said further that the accused further confirmed that total deposit for the period from 1st December 2018 to 23 November 2021 was GHC 30, 818, 824.00. PW3 said the total expenses for the period under review and confirmed by the accused was GHC 597,188.00. PW3 then said that when they analyzed the cash sales, cash expenses and cash lodgment, it showed a cash shortage of GHC 1,635,828 and a further reconciliation of the lodgment amounted to GHC 86,600.00 and the details is provided in the final audit. PW3 said they also observed that cash sales were not banked on time and in several cases cash sales received were banked after 20 days and in other cases 24 days. PW3 concluded by saying that he signed the final report and submitted same to the management of Rootsenaf Gas Co. Limited

The prosecution called PW4 who was the investigator who indicated that he knew the prosecution witnesses and also the accused. PW4 said the complainant alleged that the accused who was their supervisor at the Tudu retail outlet has stolen cash of GHC 1,633,828 from the said station. PW4 in paragraph 6 of his witness statement said, "In the said petition the complainant alleged that the accused person Lumor Wisdom Edem Abodakpui who was their supervisor at the Tudu retail outlet has stolen cash of GHC

1,663,828.00 from the said station. When they detected the theft, they engaged external auditors to audit the account book of the accused person and the auditor unveiled the theft.”

PW4 further gave evidence of how he conducted his investigation, which included visiting the Tudu Gas station where the theft occurred, and arrested the accused and escorted him to the station. PW4 said he took investigation caution statement and charge statement from the accused which he tendered same as exhibit J and K. PW4 in his evidence concluded that, based on the confirmation of the auditors’ report to the crime under investigation, he formally charged the accused person with two counts of stealing. Prosecution closed their case after the evidence of PW4.

During the trial, the accused was represented intermittently by different counsel and hence had a representation of a Lawyer to properly cross examine PW2 and PW3. For the two other witnesses PW1 and PW4, he did not have a representation, and he himself could only afford a terse cross examination of those two witnesses of the prosecution. After a number of adjournments, for the accused to produce his Lawyer and unsuccessful, the witness (PW4) was discharged, and the prosecution closed their case. After the close of the case of the prosecution, the court came to the conclusion that a case had been made against the accused person and he was called upon to open his defence. The accused elected to testify from the witness box and be cross examined by the prosecution.

The accused testified before the court and said, his name is Lumor Wisdom Edem Abodakpui. He is unemployed and lives at Osu. He denied the charges and said he started working with the company since 2016, by then he was a pump attendant for a couple of years. Accused said at that time, it was Patience Tamakloe, who is mother of the owner of the company, who was the manager. The accused said he worked under her for some time, but when they were working, they did not have any record keeping.

Accused said in 2018, she stopped working in the company so there was vacancy of her position and that was when he together with Mr. Aryee were employed as the supervisor and the manager of the company by then.

Accused said when they took over, there was no audit, so they took over from where the mother of PW2 stopped. He said he was doing most of the writing in books because the manger also supervised the other stations that they had. Accused, said after everyday sales, he reported everything to the manager on their WhatsApp platform. And moreover, before he goes to bank, the manager and the owner of the company know the amount of money that will be taken to the bank. Since the manager is not stable at one station, Accused said, he was doing most of the recordings in the notebooks. The accused said it came to a time when the manager of the company left the company, so he took the position of the daily reporting and activities of the day, so he reported every day to the company owner since he is the owner of the company.

The accused said since he has been working with the previous manager, there has not been a single day that the owner of the company has reported his missing money. Accused said, so when he also took over from the previous manager, that is Mr. Aryee, he reported to the director he never complained of any money, or a day sale have not been sent to Bank.

Accused said somewhere in November, he was not sure of the year, they employed a new manager to the company, and he asked about the system of operation at the outlet, he explained to him the way they do their banking and how he was thought to take money to bank and report to the managing director. Accused said, when he explained to him, how they take money to the bank and everything, he was not satisfied with his explanations, so he gave him a query letter, which he answered to the query letter, but still he was not satisfied with the explanation he gave to him, so he requested for auditor to audit his books. Accused said the audit was done but when he asked the auditor

whether there is a mistake about his work, he said no. Accused said he was referring to the auditor called Mr. Atta Darkwa.

Accused said the new manager told him that he will invite external auditors so that they will come and audit. Accused said so, he invited the external auditors, and they came, when they were doing their audit, they took his sales book, and they did a photocopy of it, and they told him that he should compare what is in the notebook with where they did the photocopy. Accused said that they told him that, if what is in the notebook and where they have done the photocopy, is correct he should sign, and they also told him that when what is in the notebook and what they have done in the photocopy is not correct he should write the correct figure.

Accused said, so that is what the auditors took him through during their audit. Accused said he was still working with the company by then and the manager (Mr. Fredrick Martey), the complainant (PW1) informed him that, he will bring some people to interrogate him about the audit that they have done. Accused said he came to work one Monday 13th June 2022 and the people came and he thought the interrogation will be done at the office, so he invited him to the office. Accused said when he went to the office, they told him that they were policemen, and the investigation will not be done at the office, it will be done at their office, so he should followed them to their office.

Accused said, when they went to the office, they gave him an investigator to question him and write what he knows about the audit that they have done. The accused said it was there that he got to know that they said he had embezzled the said amount in the audit report. The accused said he was arrested on the 13th of June 2022, and they granted him bail on 14th of June 2022 since that day he has not been going to the workplace again.

Accused said somewhere in July, they invited him to his boss's house for further interrogation about what he knew about the said amount. Accused said he told them that

he does not know anything about the amount of money, but he did not believe what he was telling him, and he told him that he cannot work with him again. Since that day, he has not been working with the company again.

Accused said whenever the investigator needs him at the office for some questions to be asked about the audit report, he makes himself available every day. Accused, said one day he was called by the investigator to come to the office, and he asked him whether he will change his statement that he wrote or he will maintain the statement. The accused said that he told him that he would not change, and he was told that they will be taking the matter to court if the time is due for the court, he will make him aware. The accused said on the 1st of February 2023 the investigator called him and came to court and from that day he has been in custody till now. Accused said he was granted bail, but he was not able to meet the bail conditions, and that is why he is still in custody.

The accused, after his evidence before the court made various attempts to call witnesses but he was not successful and after a number of adjournments for him to call the witnesses and unsuccessful the trial was ended, and the case adjourned for judgment.

CONSIDERATION BY THE COURT

The accused was charged with the two offences of stealing, and at the end of the trial the question for determination is whether the accused has committed the two offences of stealing brought against him. In the celebrated case of *Miller v. Minister of Pensions [1947] 1 All ER 372 at 373 it was* held that. "The constitutional presumption of innocence of an accused person is that an accused is presumed to be innocent unless he pleads guilty or convicted by a court. The presumption is rebutted when the prosecution establishes prima facie case against the accused person and the accused shall be called upon to raise

a reasonable doubt as to his guilt." See also the case of *Philip Assibit Akpeena v. The Republic (2020) 163 G.M.J. 32* .

An accused person, when called upon to open his defence, does not have a duty to prove his innocence. His only duty, if at all at this stage, is to raise a reasonable doubt in the mind of the court concerning the prima facie case established against him by the prosecution. If he is able to raise a reasonable doubt in the mind of the court, he must be acquitted and discharged. See *Bruce-Konuah v. The Republic [1967] GLR 611* and *Section 11(2) and (3) of NRCD 323*. If not, the accused will have to be found guilty of the offence and convicted accordingly.

From the evidence before the court, PW1 was employed as a Consultant and Account Officer at Rootsenaf Gas Company Limited and therefore an Officer of the company. PW1 came to meet the accused in the employment of the Company as a Supervisor as he had been employed by the CEO/MD who was PW2 in this case. PW1 in his evidence indicated what he was expecting the accused to do in terms of sales and other reporting mechanism he was supposed to do as a supervisor. PW1 then went further to state that there was an examination of Load # 233 which was sold from 9th to 14th October 2021 which were supported with pay slips deposited from 10th to 16th November 2021. Which from his evidence, there was no cash issue with respect to that load number # 233.

PW 1 then per paragraph 10 of his witness statement stated that he detected 7 truckloads of Liquified Petroleum Gas (LPG) supplied to the station where the accused is the supervisor which was not accounted for per his findings. These were loads number 235, 236, 237, 238, 239, 240 and 241 respectively. PW1 claimed he also detected some administrative responsibilities of Accused which he did not do as the supervisor and so he informed the Managing Director (MD) that is PW2 and queried the accused.

PW1 said he received the response from the accused which were part of the exhibits of the prosecution. However, PW1 said the response was not satisfactory. From the record before the court the response of the accused was tendered by prosecution as exhibit E. In this query response, the accused has professionally and impressively written a memo to PW1 and copied the MD that is PW2 explaining in detail per each load describing when the load was received, the invoice value, the total net sales, approved expenses and the banks the money was deposited.

The accused took his time to respond, which from the exhibits, can be verified. The accused even indicated on the response that he is available for any further clarification. From the evidence before the court the issues about those loads were never raised by the company again and not part of the charges brought against the accused before this court. I am of the opinion that the responses of the accused which are in evidence was satisfactory and that is why the company did not raise any issues on them against the accused and not part of the charges against the accused.

The responses of the accused could therefore not form the basis of any further investigation or audit except someone was out there fishing for something against the accused. That is why from the evidence before the court, no investigation was conducted by the investigator PW4, and officers of the company PW1 and PW2 themselves and they had no direct evidence against the accused, but all that they relied on was a general audit they commission on the station where the accused is a supervisor and there were other employees. For the officers of the company PW1 and PW2 to succeed in their course, they had to say, the response of the accused was unsatisfactory.

From the evidence on record, PW1 jump to the point in paragraph 15 of his witness statement and said that upon the unsatisfactory response from the accused person the company then engaged external audit firm to conduct audit into the account of the books of the station from 1st December to 23rd November 2021 when the accused person assumed

the role of a Supervisor. The officers of the company were sure the accused person was going to be caught up in this wide stretched net, and this was pushed by PW1. And it is therefore not surprising some of the responses of PW2 who had worked with the accused and his mother has also worked with the accused all these years.

PW1 in his evidence stated that the audit report had it that the accused person had stolen cash in the sum of GHC 1,635,828 and stated further that the accused person being the supervisor has dishonestly appropriated cash the sum of GHC 1,635,828.00. This means that the accused was brought to court basically because of the audit report and because he is the Supervisor of the Tudu Station of the Complainant company and not because there is direct evidence against him as a person.

PW2 in his evidence also said something similar and he went further to state in paragraph 11 that the accused responses did not answer the query and they were unsatisfactory. But as stated, the response which is in evidence did answer the query in a layout which takes turns to answer each question with respect to each load. PW2 in his evidence stated the interim report indicated the accused person has stolen GHC 1, 635, 828.00 over the period and said again that during the pendency of the police investigation the auditors submitted the final report which showed that the accused had stolen the cash the same sum of GHC 1, 635, 828.

This goes to buttress the point that the interim and the final report had a figure which the accused is charged with and hence there was no investigation as the investigation by the police concluded on the same figure. From the officers of the company PW1 and CEO/MD PW2 the whole trial hinges on the auditor's report. And these two Officers of the company did not give any evidence with respect to the second charge of stealing the amount GHC 86,600 brought against the accused.

From the records the accused was not represented when PW1 was giving evidence and so could not cross-examine him. During the evidence of PW2, the accused had a lawyer who cross examined PW2 on his behalf.

During cross examination these were some of the responses of PW2:

Q2: Can you tell the court the offense

A: The accused is here for misappropriation of company's funds

Q5: Before this case the accused person had worked diligently

A: Not that I know until an audit was conducted

Q7: And I believe since 2006 your company has been filing an annual financial report with the registrar of companies

A: My lord the company started full business in 2012 and registered in 2006 and we have been filing our reports since 2010

Q8: Can you provide this court with the copy of the annual financial report you filed with the registrar of companies from 2018 to 2021

A: Yes

PW2 said Yes but the said reports which he admitted they have been filing under cross examination was not filed before the court. This is important because the said question was objected to by prosecution and the Counsel for accused then, responding, indicated the reasons why it is essential for the prosecution to file same as is vital with respect to the charges brought against the accused. Counsel submitted that:

“My lord the annual financial report include the income expenditure of the company it includes the balance sheet of the company, which is the statement of the company's financial position, my lord it is important that we ascertain whether in all these filings

with the registrar of company the company that is Rootsenaft has declared any losses or shortages as regards to its operations my lord in fact this is a case of stealing and it relates to the operations of the company. Therefore, it is important that we are provided with a copy of the company's financial statement to ascertain whether the shortages attributed to the accused person in fact reflected in those returns".

From the charges this is essential and will have helped the court to do justice with respect to the parties before the court, but this was not done and Counsel for the accused was also not available to insist on same. This is essential since the auditor, in his evidence, said he did not factor or consider these filings of the company.

From the cross examination, the witness (PW2) of the prosecution also contradicted himself. These were some of his responses:

Q25: You have indicated in your witness statement that all cash sales paragraph 7 are deposited in three different accounts including GCB is that correct

A: Yes, my lord

Q25: So do you receive bank alerts from the other branches that is UBA and SGSSB

A: My lord yes please. Those accounts are not really used once a while on a Saturday we do transactions, but GCB is where we lodge

Q26: Every time the accused person makes a deposit, he sends the pay in slip to you by WhatsApp is that correct

A: No please

Q27: Did you realize any shortage in 2018

A: My lord I cannot answer to this because it was until the audit was done that, I saw the damage and the audit was done in 2022 January

Q28: So, you are on a WhatsApp group page with the accused person and Mr. Martey is that correct

A: Yes

Q29: Pay in slips of all deposits are posted on that group page is that correct

A: Yes

Now PW3 was called as a star witness of the prosecution, as the prosecution of the accused on the two charges, were based solely on his work and findings. PW3 gave evidence within the period of audit and said, the company runs manual system of recording sales cash expenses transactions. And what they did was to take the total cash sales which was GHC 33,051,840, deducted the total expenses for the period which was GHC 597,188.00 and the total deposit which was GHC 30,818,824 and they came to a cash shortage of GHC 1,635, 828 and did a further reconciliation of lodgment of Bank Statements and it revealed that lodgment amount to GHC 86,600 had not been credited to the Bank Account of the company. This is the work of the audit.

The prosecution on behalf of the Republic took these two figures wholesale and charged the accused stealing of GHC 1,635, 828 and GHC 86,600 because he was the supervisor of branch even though there were other workers.

From the evidence this is the first time that a witness of the prosecution gave an indication of the basis of the 2nd charge brought against the accused person. PW3 also tendered various documents before the court, especially exhibit H which was titled as "audit of cash operations"(The audit report the witnesses referred) . I have gone through these documents including exhibit H where the auditor made certain recommendations but there was no where it indicated that the accused had stolen or misappropriated the funds of the company as the witnesses PW1 and PW2 said when they testified before the court.

What the report said is cash shortage and total lodgment which is not reflecting in the Bank Account.

And no wonder when the auditor was asked about this during cross examination this were his responses:

Q18: In paragraph 16 of your witness statement, you indicated that there was a cash shortage of GH¢1,635,828 is that the case.

A: Yes

Q19: And cash shortages do not necessary amount to stealing is that correct

A: Yes

And there is judicial pronouncement with respect to this response from the auditor. In the case of the **State v Agyekum and Amofa (1962) 1 GLR 259** per holding 4 the court said "a mere shortage in accounts without proof of how the shortage occurred is not enough to support a charge of stealing: **R. v Okorodudu (1947) WACA 129** cited. In the instant case the prosecution has not alleged nor proved a misappropriation of specific amounts, nor indicated how the shortage occurred. The evidence proves a general deficiency and is not enough to found criminal responsibility".

From the evidence of PW3 this is the general situation with respect to the complainant company and hence not different from the recommendations that was given by the audit firm and confirmed by PW2 in his responses under cross examination.

PW3 was also cross examined with respect to cash lodgment which was the basis for which the accused was charged with the second offence, and these were some of his responses:

Q26: You had told this court that there were delays in terms of cash lodgment at the bank

A: Yes, my lord

Q28: Are you aware that cash deposit slips after the lodgment is made at the bank is sent by WhatsApp to the managing director and other senior members of the company

A: My lord I was informed of the WhatsApp as showing the proof of deposit...

Q29: Are you also aware that there can be discrepancies at the bank between the date of deposit and the date upon which it is actually reflected in the bank statement

A: My Lord this does sometimes happen at the banking industry I am not in the position to speak to that

Q30: and that is why it is important that companies prepare monthly bank reconciliation account

A: Yes, because as part of every company you are supposed to keep proper book of account and monthly reconciliation is very important

Q32: Somebody else have access to the account right

A: Yes, my lord

In the evidence of PW3 one can also see clearly that there can be other people or individuals who can also be involved and may be not the accused, if indeed a crime was committed against the company. These were some further responses of PW3 on behalf of the prosecution:

Q7: During the audit you realized that the company operates normal accounting system

A: Correct

Q8: As an auditor this system of accounting is prone to loopholes and irregularities is that correct

A: Yes

Q9: And anybody at all can take advantage of the loophole

A: Any responsible officer in the company can indeed take advantage of the loophole

Q10: Can you identify some of these responsible officers

A: Management team can take advantage of this loophole

I have considered in detail the case of the prosecution against that of the accused who gave evidence before the court by testifying from the witness box and cross examined. From the defence of the accused he indicated the processes that had happened all along and eventually the arrest. He indicated the interaction he had with the auditors and how along the line he was informed of his arrest, and he was taken to the MD who asked him about the money, and he indicated to the Boss that he does not know anything about the said money. The accused also testified of how he has availed himself all along as and when he was needed by the police and denied the charges brought against him.

I have considered the defence of the accused and I have read through the investigation caution statement of the accused which was tendered by the prosecution as exhibit J and the charge statement which was tendered by the prosecution as exhibit K. In exhibit J the accused stated, " I want to state that I do not know anything about how GHC 1,734,589 was misappropriated". I want to say that from the evidence before court, considering the evidence of the prosecution and the defence of the accused, I am of the humble opinion that the accused person has been consistent with his defence right from the beginning when he was arrested, statement he gave to the police, that is the investigating caution statement and the charge statement, is consistent with his evidence that he gave before the court under oath.

In the case of *State v. Otchere* [1963] GLR 463, it was held that “a witness whose evidence on oath is contradictory of a previous statement made by him whether sworn or unsworn, is not worthy of credit. Such evidence cannot be regarded to be of any importance in the light of the previous contradictory statement, unless the witness is able to give a reasonable explanation for the contradiction”. See also the case of **Poku v The State (1966) GLR 262, Yaro and Another v The Republic (1979) GLR 10**. Looking at the position of the law, if the accused in his various statement has been consistent, then he must benefit from same, that he is a person worthy of credit and indicates that he does not have a guilty mind.

I am also strengthened in this position by the authority of the case of **Logan and Laverick v The Republic (2007-2008) SCGLR 76** where the SC stated, “As has already been stated, the defence put up by the appellants was more consistent with innocence than with guilt and on the authority of **R v Ansere (1958) 3 WALR 385 @ 387, CA**, the trial Court should have given the benefit of doubt created by the appellants’ defence to appellants and acquitted and discharged them. The findings in support of the conviction were mere speculations and suspicions”.

From the totality of the evidence on record before the court I am of the opinion that the evidence of the defence, is reasonably probable. The principle of law is that the accused’s story needs only be reasonably probable. See: **Lutterodt v COP (1963) 2 GLR 429 @ 489, Amartey v The State (1964) GLR 256, Brempong v The Rep. (1995-1996) 1 GLR 321 @ 350**.

The defence of the Accused is therefore reasonable and hence creates doubt, which will benefit the accused before the court. According to Justice A.N.E. AMISSAH, in his book ‘**Criminal Procedure in Ghana**’, 1982, p. 95, the existence of the reasonable doubt will obviously mean that the prosecution has failed to prove its case ‘beyond reasonable doubt’.

It is trite learning that the law does not require much from the accused, but the accused is only to raise reasonable doubt as to his guilt. See the Judgement of **Korsah CJ in the case of COP v Antwi (1961) GLR 408, See also Osafo v The Rep. (1993-94) 2 GLR 402.**

The accused will therefore benefit from the doubt created by his defence and will be found not guilty on the two counts. The accused will therefore be acquitted on the two charges brought against him and accordingly discharged.