

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT  
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA  
ON WEDNESDAY, 19<sup>TH</sup> JULY, 2023

SUIT NO. D7/11/21

THE REPUBLIC  
VRS  
GEORGINA MENSAH

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JUDGMENT

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On the 28<sup>th</sup> day of February, 2023, I determined in a 26 page ruling that prosecution had established a prima facie case against the accused person on count one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen and eighteen. She was thus called upon to open her defence if she so desired.

Denning J (as he then was) in the celebrated case of *Miller v. Minister of Pensions [1947] 1 All ER 372 at 373* 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 a 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 dictum of Dennis Adjei JA in the Court of Appeal case of *Philip Assibit Akpeena v. The Republic (2020) 163 G.M.J. 32*

In her defence, accused person testified and called three witnesses. An accused person when called upon to open her defence does not have a duty to prove her innocence. Her 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 her by the prosecution. If she is able to raise a reasonable doubt in the mind of the court, she must be acquitted and discharged. See *Bruce-Konuah v. The Republic [1967] GLR 611* and *Section 11(2) and (3) of NRCD 323*.

## **THE EVIDENCE OF DW1**

Accused person subpoenaed DW1 in this matter. His evidence is that he is clerk. That whenever the bank does not come for money from the accused person's depot which is not a usual occurrence, he goes for it and he also goes for money from her during emergencies. That he deposits such moneys in accused person or his own name.

He said apart from these two instances, he never takes money from the accused person and in accused person's depot, payments are not made by cheque.

Under cross examination, DW1 agreed with prosecution that none of the moneys he took from accused person as indicated in his evidence in chief forms part of the moneys accused person is alleged to have stolen in this court.

## **THE EVIDENCE OF ACCUSED PERSON**

In her evidence in chief, accused person said she always sends her books to the main depot for auditing and the auditing comprised of goods received, goods sold (both cash and on credit) monies received, moneys paid to the bank and goods remaining. That during their auditing, her madam always used sales day books and the bank deposit books rather than receipts and always made sure everything was accurate before accepting her books.

That some customers buy on credit and some pay using cheques and/or MOMO and these go directly to complainant. There are other times that some customers return purchased goods and she records same as deposits to be picked up at anytime or she refunds their money to them.

That they were times where complainant would send one Amos to come for any sales that she has made. That the said Amos comes for those moneys and sends it to Ghacem to purchase books. That all these monies do not reflect in the banking books or the account statements. That Amos also comes for money when same is not picked up by the cash management team and these moneys are not captured in her name.

That some customers buy with on credit and others pay by cheque and such payments were made to the bank by Amos or Juliet Saka. That other customers come for the cement from her depot but pay directly to complainant. That other times, depot 2 comes for some of her stock and accounts for the sales even though this reduces her stock.

That complainant was in the habit of asking her to send money to her through a mobile money vendor by name Alex Boahen. Complainant also asked the said Vendor to send moneys to some workers and she (accused person) would have to reimburse the said Alex. That the said transactions were recorded in a book which is currently with complainant.

That complainant sold different brands of cement and although the stocks were counted together, monies received were paid directly to complainant or Amos Nanor. That sometimes, complainant also asked her to send various amounts of money to different people and she sometimes paid the boys who offloaded cement from Ghacem. That these were kept in a book.

She denied stealing complainant's money to buy a laptop and said her brother bought her the laptop. She attached the receipt of purchase as bearing her said brother's name. That he said brother also gave her money to purchase a wheel barrow to use in transporting the cement that customers purchase. Her said brother also bought her a motor tricycle for Ghs 3,500 to use in business and he asked her to register it in her name.

She denied using the company's money to buy a piece of land and said she made her own money from the tricycle as well as the wheel barrow business.

That upon her arrest, the police seized the keys to her room. That she went to the said house and met the police officer, station officer, complainant, complainant's mother, Juliet Saka and some of the store boys and they assaulted her and her brother beat her up and gave her a paper to sign. That the paper was folded leaving only the signature portion and when she refused to sign, she was further assaulted.

That the police told her the paper indicated that she had come for her personal belongings. She denied being informed or called for any auditing. She denied that fraudulent receipts were found in her room. That complainant threatened and assaulted her in the presence of the C.I.D and that is what led her to withdraw the Ghs 10,000 from her bank account for complainant.

The police also seized her phone and told her they would detain and arraign her before court if she did not withdraw the money and also that if she co-operated, they would give her her phone to call her family.

In accused person's investigation caution statement which is in evidence as EXHIBIT A, said when her madam called to tell her that she had detected a shortage of 628 bags of cement worth Ghs 24,500, she begged and told her that she would pay for the shortage. That she went to the shop and told her madam that she had Ghs 10,000 at the bank and a tricycle bike which she was ready to give to her and she also begged for time to pay the balance.

That her madam called the police and she went with the police to withdraw the Ghs 10,000 and also brought the tricycle to her madam. That she promises to pay the balance of GHS 9,000 on Monday.

## **THE EVIDENCE OF DW2**

According to DW2, the accused person is his junior sister. That he purchased a laptop for her to aid her in her school assignments. He tendered in evidence the receipt of purchase. That he also gave her money to purchase wheel barrows to rent out to people who purchased cement as transportation.

That the accused person had about fifteen wheel barrows at the time of her arrest. He tendered in photographs of some of the wheel barrows. That he also purchased a tricycle for her and asked her to register it in her name.

That for the signing of the document, he and accused person were assaulted by the complainant and others in the presence of the police and they told the accused person to sign it because of the things she had taken. That it was not for an audit and he and accused person were insulted.

## **THE EVIDENCE OF DW3**

According to DW3, he began a mobile money business on 1<sup>st</sup> January, 2018 but registered same in the year 2020. That his shop was close to that of accused person's depot. That his merchant number bears his name.

That in 2019, complainant made him to send Ghs 1,000 to her phone and asked him to take the money from the accused person. That complainant also sometimes asked him to send money to other people and take it from accused person.

He continued that accused person always paid him these moneys after confirming from complainant and same was always recorded in a book. Accused person closed her case after this.

In arriving at whether an accused by her defence has raised a reasonable doubt, the court may either believe or accept the explanation given by the accused or find that although it disbelieves the explanation, it is reasonably probable. In both instances, the court must acquit and discharge the accused. Thirdly, the court must consider the whole evidence on record and see if it raises any defence in favour of the accused. If quite apart from the defence's explanation, the court is satisfied on a consideration of the whole evidence that the accused is guilty, it must convict. See the case of *Brempong II vrs. The Republic* [1997-98] 1 GLR 467 and *Tsatsu Tsikata vrs. The Republic* [2003-2004] SCGLR 1068.

To begin with, I do not believe the accused person and neither do I find her evidence to be credible. Accused person had admitted in her investigation caution statement to being responsible for the shortage of 628 bags of cement. She had mentioned using the proceeds of the cement to buy a tricycle which she handed to complainant herself. She admitted to withdrawing the said sum of Ghs 10,000 for complainant.

In this court, she changed her words to say that the tricycle was purchased for her by DW2; her brother and also that she was placed under duress to withdraw the Ghs 10,000. A person cannot make varying statements and expect a court to believe her unless there is some reasonable explanation as to the variance in her statement.

In the case of *Odupong v Republic* [1992-93] GBA 1038, the Court of Appeal, coram Amuah, Brobbey JJA's as they were then, and Forster JA held on this principle as follows: "*The law was well settled that a person whose evidence on oath was contradictory of a*

*previous statement made by him, whether sworn or unsworn, was not worthy of credit and his evidence would be of no probative value unless he gave a reasonable explanation for the contradiction.” See also the cases of Gyabaah v Republic [1984-86] 2 GLR 416 and Kuo-den alias Sobti v Republic [1989-90] 2 GLR 203 SC*

Accused person’s explanation as to the variance in her evidence in chief and that of her investigation caution statement was simply to deny making same in one breadth and in another claim that she was placed under duress.

As prosecution had put it to accused person under cross examination at page 73 of the record of proceedings that:

Q: *Per proceedings of 12/3/21, you indicated through your counsel that you bought the tricycle, I put that to you.*

A: *No my lord. My counsel did not even discuss with me and she did not take statement from me at the time.*

Q: *So do you want the court to believe that when your counsel said police forced you to go and take the money at bank, it is not true.*

A: *It is true my lord.*

Accused person’s own previous counsel had submitted to the court on the 12<sup>th</sup> day of March, 2021 (page 8 of the record of proceedings) that:

Counsel: My Lord, as for the tricycle, accused person made the business aware that she bought it for them that is complainant. With the GHS10, 000, accused person was taken to the bank under duress to withdraw same and the laptop was found in her

room. She did not willingly give it out to PW1. My client has a claim of right to the GHS10, 000 and the laptop.

Accused person's own counsel had not mentioned that it was the brother of accused person who purchased the said tricycle. Accused herself had said in her investigation caution statement that she had a tricycle motorbike which she was ready to give to the complainant. Her counsel had said that tricycle was purchased with complainant's money for the business and then accused person in her evidence in chief says that her brother purchased it for her.

The accused wants this court to believe that her counsel's statement that she was placed under duress for the recovery of the Ghs 10,000 from her bank, a statement which she herself has testified of in her evidence in chief is the truth, yet the court should not take into account the other part of the same submission which is that she purchased the tricycle with the funds of complainant. Accused person wanted to eat from both sides of her mouth and I found her to be an untruthful witness.

The said brother was a complete disaster under cross examination in this court and DW1 whom the accused person had subpoenaed was also emphatic that the any moneys which he collected from the accused person's depot was not part of the moneys which accused person was being accused of as having stolen in this bank.

It is trite that a confession statement when properly obtained constitutes evidence against the accused persons. In the case of *Francis Arthur vrs. The Republic (Criminal Appeal No. J3/02.2020 ) delivered by the Supreme Court on 8<sup>th</sup> December 2021, Amegatcher JSC* in reading the decision of the apex court quoted with approval the dictum of Akamba JSC in the case of *Ekow Russell vrs. The Republic [2017-2018] SCGLR 469* which is that



“A confession is an acknowledgment in express words, by the accused in a criminal charge, of the truth of the main fact charged or of some essential part of it. By its nature, such statement if voluntarily given by an accused person himself, offers the most reliable piece of evidence upon which to convict the accused. It is for this reason that safeguards have been put in place to ensure that what is given as a confession is voluntary and of the accused person’s own free will without any fear, intimidation, coercion, promises or favours”.

The accused person was represented by counsel who raised no objection to the admissibility of her confession statement prior to same being admitted into evidence. That being so, the confession of accused person in her investigation caution statement constitutes evidence against her as to the commission of this crime so far as 628 bags of cement are concerned. I take note that she confessed to this before the auditing was carried out. It is the auditing that gave a complete picture as to how much was in issue.

On accused person’s witnesses, as earlier indicated, DW1’s evidence contradicted the claim of accused person as he was emphatic that any money he received from the accused person’s depot to deposit at the bank or use for emergency purposes for the company were not part of the moneys accused person is alleged to have stolen in the charges which have landed her before this court.

DW2 who testified as the brother of accused person was a complete disaster of a witness. Cross examination discredited him so much that this court cannot place any probative value on his evidence.

DW2 wants the court to believe that for a laptop that was to be used personally by the accused person for her school work and which cost less, he decided that same should be in his name and yet for the tricycle which cost more and which the accused person was to use in earning an income, he decided that same should be in accused person’s name.

When he was cross examined on the tricycle, the question had to be repeated to him three times before he answered. He appeared to be thinking about the right answer to say and was delaying the answer by asking for a rather simple question to be repeated to him three times. Again, I noted that DW2 was verbose and vituperative in his answers. He appeared to have rehearsed his evidence and so even when a question did not require a certain answer, he was quick and insistent on saying whatever he had rehearsed.

Again, although DW2 says he was the one taking care of accused person before she met complainant and started working with her, accused person herself says in that she was gainfully employed at ShirlJoy and under cross examination says she had made some money from this employment before she started working with complainant.

Also, the accused person had said she and DW2 were assaulted by complainant and some of the store boys and she was forced to sign the audit report without knowing the contents. DW2 had said the same in his evidence in chief. Then under cross examination at page 83 of the record of proceedings, he had oscillated between he and accused person being physically assaulted and they being insulted.

Q: *I am further putting it to you that nobody assaulted you nor your sister, the accused person and that is why you did not find it necessary to report to the police.*

A: *My lord, it is not that we were assaulted but they insulted us very well even PW1 was insulting us and pointing her fingers in my face.*

Q: *Would you be surprised to know that accused person told the court that you and her were beaten and assaulted?*

A: *My lord, it is true that we were assaulted.*

Q: *I am further putting it to you that accused person was not forced, she was not under any duress to sign the invitation letter, she did that willingly.*

A: *My lord please, we were forced to sign and she signed. It is because we were forced to sign that up to date, she has still not received her items.*

I agree with prosecution that DW2 was a coached witness who was out to throw dust into the eyes of this court. At a point, he appeared quite confused as to his purpose and mission in this Court.

DW3's evidence did not do any wonders for the accused person. His evidence that the complainant used to make him send monies to people and also to her and he would go for the said monies from accused person was never put to complainant when she was in the witness box for her to respond to same.

Again, although DW3 says he was running the business from 2018 and it is his own business, under cross examination, he had answered that he was running the business with a friend's Sim card from 2018 to 2020 and only registered his business in 2020.

That friend's name was not mentioned and neither did he or she testify in this court. I did not find his evidence to be convincing and do not believe that he run a business of his own for two years and was using the SIM Card of a friend when the primary item of that business he was running was a SIM card.

As prosecution's evidence is that the accused person had used some of the proceeds of the crime to set up a mobile money business and DW3 testified as a friend of the accused, his evidence could have been more relevant if it had explained that it was another friend rather than the accused person, whose SIM card he was using to operate within the period.

Most importantly, he could not provide a reasonable answer as to whether assuming without admitting he indeed sent some moneys to and for complainant, same formed part of the moneys accused person is alleged to have dishonestly appropriated.

At page 91 and 92 of the record of proceedings, he had answered;

*Q: How did you know that the money that you were transferring to PW1 formed part of the money appropriated by the accused person in this case?*

*A: Sometimes when I close and go home, complainant calls me to send money to someone and so the next day, when I come and I go and ask accused person to pay the money, she would say that she has not yet made any sales for the day and so I should wait. It is after she has sold some of the cement that she would give me the money. So the payment was from the cement money.*

DW3 appears to be of the opinion that it is all the moneys earned from all the bags of cement in accused person's depot that accused person is alleged to have stolen.

That is not so, accused person is charged specifically with stealing the proceeds of various bags of cement which are contained in count one through to count eighteen and not the proceeds of all bags of cement placed under her control at her depot from the time of her employment till the time of her arrest.

At the close of accused person's defence, I find that I neither believe her explanation nor find it to be reasonably probable. I have also meticulously and with a fine comb, gone through the evidence on record to see if it raises any defence in her favour which she herself has not raised. It does not. I thus find at the close of her defence that she has failed to raise a reasonable doubt in my mind.

After a consideration of all the evidence on record and applying it to the relevant law, I find at the close of the trial that prosecution has established the guilt of the accused person beyond reasonable doubt on the charge of stealing on all eighteen counts. I hereby convict her on all eighteen counts of stealing as contained in the charge sheet.

### **PRE SENTENCING HEARING**

According to prosecution, the convict is not known. According to prosecution. Save for the Ghs 10,000 and the tricycle, nothing has been recovered. There is also a land that the convict used the proceeds of her crime to purchase.

Victim Impact Statement: my lord, this offence has affected me a lot as I procured a loan for the business. This offence has led me to shutting the shop. That is all.

In mitigation, convicts say that she pleads with the court and complainant for her actions.

BY COURT: How old are you now?

Convict: 27 years old.

BY COURT: Do you have a child?

Convict: No my Lord.

BY COURT: Is there anything else you would like for the court to consider?

Convict: My Lord, I am a student and I pray that the court has mercy on me. I am a final year student and I pray for mercy.

### **SENTENCING**

Per *section 296 of the Criminal and Other Offences Act, 1960 (Act 30)*, the offence of stealing falls under the 2<sup>nd</sup> degree felony offences that carry a maximum imprisonment term of 25 years. Thus for each of the eighteen counts, I can sentence the convict to a maximum of twenty five years in custody.

However, in arriving at an appropriate sentence, I must take into account both aggravating and mitigating factors. This appears to be a premeditated offence which the convict took steps to commit and hide. As indicated in my ruling on the determination of a prima facie, the accused person had hidden her dishonest appropriation by amongst others issuing receipts which bore her number and thereby making it difficult for the real purchasers if at all to be traced. She also committed the offence over a long period of time and appeared to become more brazen as time went on.

The offence had lasted for many months and she had used the proceeds to purchase items some of which were for her personal use, others of which (like the tricycle) were to enable her earn an income on the side of complainant's business and others like the land which she acquired for personal gain. It appears that she wanted to grow a business and acquire properties at the expense of collapsing the business of PW1. This is despite the evidence on record that Pw1 had not only employed her but treated her like a sister.

She had also taken prosecution through a full trial to establish her guilt even though at the initial stages, she had admitted the offence in her investigation caution statement and indicated what she had used some of the money for. She had also shown next to little remorse in the course of this trial, save for the tears which she appears to be shedding in court immediately after her conviction.

Again, the amount involved is quite high. It is one hundred and forty five thousand, fifty three Ghana cedis and 50 pesewas (Ghs 145,053.50). It is money that could have been used by the company for other purposes including to grow the business and employ more workers.

Also, I take note that stealing among the youth is on the ascendancy within this jurisdiction and appears to be a go to for many youths. Stealing is an offence and it cannot be justified on the altar of youthful exuberance. If at all, the youth must stay away from crime and not experiment with same. That can only happen when the Courts do not turn a blind eye and gloss over such offences with the imposition of sentences that are too lenient.

In mitigation however, the convict is a first time offender and a student. At the age of twenty seven years, she is also considered to be in her youthful stages and any punishment that would be meted out to the court should not be too harsh as to waste her youth.

The sentence if at all must be with an aim at reformation in order to ensure that she leads the remainder of her life on the straight and narrow and as a useful rather than burdensome citizen to the people of this country.

The sentence must however not to be lenient in order not to give an impression that one is likely to receive a slap at the back of his hands for committing such an offence particularly so if they are young and female.

In consideration of both the mitigating and aggravating circumstances, I hereby sentence the convict on count one to a two year term of imprisonment, on count two to a two year term of imprisonment, on count three to a four year term of imprisonment, on count four to a four year year term of imprisonment, on count five to a three year term of imprisonment, on count six to a two year term of imprisonment, on count seven to a six year term of imprisonment, on count eight to a four year term of imprisonment, on count nine to a four year term of imprisonment, on count ten to a four year term of imprisonment, on count eleven to a four year term of imprisonment, on count twelve to a five year term of imprisonment, on count thirteen to a five year term of imprisonment, on count fourteen to a one year term of imprisonment, on count fifteen to a four year term of imprisonment, on count sixteen to a two year term of imprisonment, on count seventeen to a one year term of imprisonment and on count eighteen to a six year term of imprisonment. The terms are to run concurrently.

It is hereby ordered that prosecution releases the sum of ten thousand Ghana cedis (Ghs 10,000) and the laptop retrieved from the convict to the complainant forthwith. Prosecution in its charge sheet and brief facts indicated that all the items recovered have a value of twenty thousand Ghana cedis (Ghs 20,000). The convict is hereby ordered to pay the remainder of the amount of one hundred and twenty five thousand and fifty three Ghana cedis, fifty pesewas (Ghs 125,053. 50) (i.e. one hundred and forty five thousand, fifty three Ghana cedis and 50 pesewas -Ghs 145,053.50) less the twenty thousand Ghana cedis (Ghs 20,000) to complainant by the end of November, 2023.



(SGD)

**H/H BERTHA ANIAGYEI (MS)**

**(CIRCUIT COURT JUDGE)**

A.S.P STELLA ODAME FOR THE REPUBLIC

KWAME OPPONG ADADE FOR THE CONVICT ABSENT