

CORAM: HER HONOUR MRS ADWOA AKYAAMAA OFOSU, CIRCUIT COURT
JUDGE SITTING AT THE CIRCUIT COURT MPRAESO, EASTERN REGION ON
THE 19TH OF OCTOBER, 2023

B7/141/2023

THE REPUBLIC

V

EMMANUEL ASARE

.....
.....

TIME: 10:05

ACCUSED PRESENT

CHIEF INSPECTOR M. POMEVOR FOR PROSECUTION PRESENT

ACCUSED SELF-REPRESENTED

JUDGMENT

The accused person herein was arraigned before this court on the 1st of March, 2023
charged with one count of *unlawful entry* contrary to section 152 of the **Criminal**

Offences Act, 1960 (Act 29) and two counts of *stealing* contrary to section 124 of Act 29 supra. The accused pleaded guilty to counts one and two but added an explanation to his plea and Not Guilty to count three. This court differently constituted upon listening to the explanation entered a plea of Not Guilty on counts one and two and set the case down for hearing for the guilt of the accused to be proved beyond reasonable doubt by the prosecution.

The brief facts in support of the charges are that the complainant is John Quansah, a business man whilst the accused is a driver both residing at Akyem Ntronang. On 27th December, 2022, at about 8:00pm the complainant returned from town and detected a theft of his five (5) pounds refined gold valued at GH¢27,000.00 and cash sum of GH¢26,000.00 which was kept in a sack in his living room.

On the 28th of December, 2022, at about 5:30 am after the complainant made an announcement at the community information center, a witness in the case informed the complainant that he saw the accused hiding something under his dress coming from the complainant's compound. On 2nd January, 2023 at 8:30 am, a case was lodged with the police at Ntronang. Police visited the crime scene and found an empty sack in which the exhibits were kept and took photographs of the scene. On the same date at about 8:30pm the accused was arrested, cautioned and detained. The accused admitted having stolen GH¢9,000.00 from the complainant's room and used GH¢5,500.00 to buy a royal motor bike but denied theft of the gold.

A search was conducted in his house but none of the exhibits were found and the said motor bike was retained for evidential purpose. In the cause of the investigation the accused person was charged with the offences as stated on the charge sheet and put before this honourable court.

The foundation of our criminal justice system is premised on Article 19(2)(c) of the 1992 constitution which provides that a person charged with a criminal offence is presumed innocent until he is proven guilty or has pleaded guilty. In **Asante (No 1) v The Republic (No.1) [2017]-2020] 1 SCGLR 132 at 143**, Pwamang JSC held that:

“Our law is that when a person is charged with a criminal offence it shall be the duty of the prosecution to prove his guilt beyond reasonable doubt, meaning the prosecution has the burden to lead sufficient admissible evidence such that on an assessment of the totality of the evidence adduced in court, including that led by the accused person, the court would believe beyond a reasonable doubt that the offence has been committed and that it was the accused person who committed it. Apart from specific cases of strict liability offences, the general rule is that throughout a criminal trial the burden of proving the guilt of the accused person remains with the prosecution. Therefore, though the accused person may testify and call witnesses to explain his side of the case where at the close of the case of the prosecution a prima facie case is made against him, he is generally not required by the law to prove anything. He is only to raise a reasonable doubt in the mind of the court as to his commission of the offence and his complicity in it except where he relies on a statutory or special defence”

The term "reasonable doubt" as explained by Lord Denning in the case of **Miller vs. Minister of Pensions (1947) 2 All ER 372** is as follows;

“It needs not reach certainty but must carry a high degree of probability. 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 positions to deflect the course of justice”

To discharge its burden of proof, the prosecution called three witnesses being John Quansah, PW1 the complainant, Christian Badzi, PW2 and G/Corporal Fenning Osei Gabriel, PW3 the investigator. The prosecution tendered the following exhibits through PW3:

Exhibit A: The cautioned Statement of the accused

Exhibit B: The Charge Statement of the accused

Exhibit C: Photograph of the sack that contained the money stolen

Exhibit C1: Photograph of the Royal Motor bike retrieved from the accused

Section 152 of Act 29 under which the accused person is charged on count one provides that:

“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 further explains unlawful entry as:

“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”

To secure a conviction on this charge, the prosecution is required to prove that

1. There was an entry
2. That the entry was made into a building
3. The entry was unlawful
4. There was an intention to commit a crime

The accused person in the instant case gave a confession statement to the police wherein he admitted entering the room of PW1 and taking an amount of GH¢9,000.00. This should ordinarily relieve the prosecution of proving the charges against the accused person however the position of the law is that *“an extra judicial confession by an accused that a crime had been committed by him did not absolve the prosecution of its duty to establish that a*

crime had actually been committed by the accused. It was desirable to have outside the confession, some evidence be it slight, of circumstances which made it probable that the confession was true".

(See: **State v Owusu and Another [1967] GLR**)

Thus in proving the ingredients of the offence of unlawful entry, PW1 told the court that PW2 told him that on his way to church on the day of the incident whilst going to church, he saw the accused person standing on the road leading to his (PW1's) house around 7:00 pm. That while he was returning from church, he again saw the accused person holding a sack and upon seeing him the accused hid the said sack in his dress.

PW2 also testified that on the said date whilst on his way to church, on reaching PW1's house he saw the accused standing by the road side urinating. A few minutes later he passed again and saw the accused person pretending to be urinating at the same spot where he first saw him and by passed him to church. PW2 further told the court that on his return from Church, he met the accused holding a sack loaded with something and when he saw him, he hid it in his dress but he thought that the accused had sold gold to PW1 and was hiding the money.

From the evidence of the two prosecution witnesses, it is clear that none of them saw the accused enter the house of PW1 on the said date but at least he was seen around the house of PW1. During cross examination of PW2, the accused challenged him that it is not true that he saw him near PW1's house. Be that as it may, the confession statement by the accused and his own evidence in court that he went to PW1's house and entered his room makes it probable that PW2 saw the accused person around PW1's house and indeed the accused person entered PW1's room. This means that the first two ingredients of the offence have been proved.

The next to be considered is whether **the entry was unlawful**. The evidence established that the accused entered the room when PW1 was not in his room. The position of the

law is that an entry into a building is unlawful if it is made by a person otherwise than in his own right or by the consent of some other person able to give such consent for the purpose for which he enters (**See: Criminal Law in Ghana by P.K. Twumasi at page 383**). In this case, there is no evidence that the accused person obtained the consent of PW1 to enter his room or that he was permitted to enter PW1's room by a person who is able to give that consent or that he had the right to enter the room. I therefore find that the entry of the accused person into PW1's room was unlawful.

The final element is '**intention to commit crime**'. According to P.K. Twumasi in his book *supra*, to constitute the offence of unlawful entry contrary to section 152 of the criminal code, 1960 (Act 29), it is not enough to prove that the accused person entered the building unlawfully. The most essential element of the offence is the intention of the accused of committing a crime in the building which he unlawfully enters. As regards proof of intention, it has been repeated many times without number that it is not capable of direct proof but can only be inferred from other facts proved, including, in the case of unlawful entry, the conduct of the accused both before and after the entry, the mode of entry, the presence of anything against which a crime can be committed and all other circumstances. It is not necessary for the prosecution to prove that a crime was actually committed. Proof of the entry and the intention of committing a crime are the only constitutive elements of the offence

In this case there is evidence that the accused person committed a crime that is dishonestly appropriated GH¢9,000.00 belonging to PW1. In his defence, the accused told the court that PW1 has been assisting him and others with money to go and do gold work and PW1 also buys gold from him so they usually go to him for money. This evidence of the accused was challenged by the prosecution during cross examination of the accused. Here are excerpts of the relevant portions:

Q: I am putting it to you that you are not an employee of the complainant

A: He is my master whom I work with. I take money from him to go and work and when I get the gold I send it to him

Q: How long have you been working with John Quansah

A: For more than two years

Q: I put it to you that John Quansah is not owing you any amount

A: He is owing me

Q: I am also putting it to you that John Quansah never employed you to work for him

A: I worked for him and he was the one I gave the gold to

Q: When the police arrested you, you did not inform the police that you were an employee of John Quansah so what you are saying is an after thought

A: When the police started asking me questions and I told them that I took C9,000.00 they started beating me so I could not offer any explanation again.

Assuming that the police started beating the accused person that is why he could not offer any explanation, the accused had the opportunity again to put his case across when PW1 mounted the witness box. The accused person however did not cross examine PW1 on his alleged previous working relationship with him. There is therefore no evidence that the accused had any prior dealing with PW1 at the time he entered PW1's room.

The accused person attempted a lame explanation as to why he entered PW1's room. According to the accused on the said day, he went to PW1's house to collect money for his work. When he went, PW1's door was not locked and there were slippers in front of his room so he thought he was in the room. He knocked the door several times but he did not respond so he became alarmed and decided to enter the room to see what was

happening so that if he is sick he could take him to the hospital. Considering as I have found that there was no prior relationship between the accused and PW1, I find the accused person's explanation to be an afterthought and that the sole reason why the accused went to PW1's room on the day in question was to commit a criminal offence. In **Kanjarga v. The State [1965] GLR 479 at 482**, the court held that:

"To constitute that offence, the entry must be made with a purpose or intent to commit a crime. It follows that in addition to proving entry, the prosecution, to succeed, must prove that intent to commit a crime in the premises existed at the time of the entry and was the purpose for the making of the entry..."

In the circumstance, it is my view that the prosecution successfully proved that the intention with which the accused entered the room was to commit a crime. On the whole therefore the prosecution succeeded in proving the guilt of the accused on count one beyond reasonable doubt.

Section 124 of Act 29 under which the accused is charged on counts two and three provides that:

"A person steals who dishonestly appropriates a thing of which he is not the owner"

In **Mensah v The Republic [1978] GLR at 419**, it was held that the basic ingredients requiring proof in a charge of stealing were:

1. That the person charged must not be the owner of it
2. That he must have appropriated it
3. That the appropriation must have been dishonest

See also, **Ampah v The Republic [1977] 2 GLR 171**

Section 120 of Act 29, stipulates that an appropriation of a thing is dishonest,

- (a) If it is made with an intent to defraud or*
- (b) If it is made by a person without claim of right and with a knowledge or belief that the appropriation is without the consent of a person for whom that person is a 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.*

The evidence of the prosecution is that the PW1 went to town and on his return found that his GH¢26,000.00 together with his gold bar valued GH¢27,000.00 were missing. The evidence has established that the accused person entered PW1's room and in **Exhibit A**, the cautioned statement of the accused, he stated that he entered the room of the complainant in his absence and found an amount of GH¢9,000.00 in a sack on PW1's carpet and he took it. He denied however that it was GH¢26,000.00 that was in the room and he also denied taking the alleged gold bar. Before this court, the prosecution has not demonstrated that indeed PW1 had an amount of GH¢26,000.00 as well as a gold bar in his room. The prosecution must bear in mind that it has the legal burden to prove the guilt of the accused person beyond reasonable doubt and therefore must not take chances and assume that because PW1 alleged that he had GH¢26,000.00 and a gold bar in his room, he indeed had those things in his room and therefore since the accused person entered the room he dishonestly appropriated them. The prosecution ought to have led evidence to show that PW1 had GH¢26,000.00 and a gold bar in his room particularly when the accused denies same. This, the prosecution could have done by leading evidence to show how the complainant came by the said money and the gold bar by for example leading evidence on the date he got them, the transaction by which he got them, persons from whom he got them, documents in support of the transaction etc for the court to make a finding on the preponderance of probabilities.

That notwithstanding, the position of the law is that where a person was charged with stealing a certain sum, it would be sufficient if the prosecution proved that he in fact stole part of that sum. (See: **Lawson v the Republic [1977] 1 GLR 63**)

In the circumstance, since the evidence has established that the accused person dishonestly appropriated an amount of GHC9,000.00 belonging to PW1, he is guilty of stealing on count two.

On count three, as already intimated, the prosecution was not able to lead any evidence to show that PW1 had a gold bar in his room and indeed no gold bar was found on the accused person when a search was conducted in his room upon his arrest. There is also no evidence that the accused gave or sold any gold bar to any person. In my humble view therefore, the prosecution failed to prove the guilt of the accused beyond reasonable doubt on count three.

In conclusion, the prosecution succeeded in proving the guilt of the accused person beyond reasonable doubt on counts one on unlawful entry and count two for an amount of GHC9,000.00. The accused is accordingly acquitted and discharged on count three. He is however pronounced guilty and convicted on counts one and two.

SENTENCING

In sentencing the accused, I have taken into consideration the plea in mitigation by the accused and the fact that he does not have a previous conviction. Furthermore in accordance with Article 14 (6) of the 1992 constitution, I have taken into consideration the period that the accused person has been in custody as well as the fact that his act was premeditated. I therefore sentence the accused to three (3) years imprisonment in hard

Labour on count one and five (5) years imprisonment in hard labour on count two. The sentences are to run concurrently.

RESTITUTION ORDER

In accordance with section 145 of the **Criminal and other offences (Procedure) Act, 1960 (Act 30)**, it is hereby ordered that the Royal Motorbike with Registration number M-21-GS 3714 which was bought out of the GH¢9,000.00 the accused stole from PW1 and which is in the custody of the police be released to PW1.

H/H ADWOA AKYAAMAA OFOSU (MRS)

CIRCUIT COURT JUDGE