

CORAM: HER HONOUR MRS ADWOA AKYAAMAA OFOSU, CIRCUIT COURT
JUDGE SITTING AT THE CIRCUIT COURT MPRAESO, EASTERN REGION ON
THE 31ST OF OCTOBER, 2023

B9/1/2024

THE REPUBLIC

V

OWUSU ANSAH MARTIN @SAMMY TUGA

.....
.....
TIME: 12:20

ACCUSED PRESENT

CHIEF INSPECTOR BEATRICE LARBI FOR PROSECUTION PRESENT

ACCUSED SELF-REPRESENTED

JUDGMENT

Owusu Ansah Martin, the accused person in this case, has been charged with three counts of offences under the **Criminal Offences Act, 1960 (Act 29)** as follows:

Count one: Causing Unlawful Damage contrary to section 172 of Act 29

Count Two: Unlawful Entry contrary to section 152 of Act 29

Stealing contrary to section 124 of Act 29

The accused was arraigned before this court on the 11th of September, 2023 and when the charges were read to him, he pleaded not guilty to them. On the basis of his plea, the prosecution assumed the burden to prove the accused person's guilt beyond reasonable doubt.

The brief facts supporting the charges are that the complainant is a businessman while the accused is unemployed. They both reside at Oframase near Nkawkaw. On the 7th of September 2023, at about 6:00am the complainant visited his warehouse at Oframase and detected that a thief or thieves had broken into the said warehouse by causing damage to the burglar proof valued at GHC1,500.00 and gained ingress into the warehouse and made away with unspecified packs of assorted soft drinks valued at GHC32,000.00 and one Tricycle engine valued at GHC5,000.00. Statement was obtained and crime scene was visited where photographs were taken.

The complainant highly suspected the accused to have committed the offence. On the 9th of September 2023 at about 5:00 am the accused was arrested by the complainant and some witnesses in connection with another stealing case at the same town. The accused person was escorted to his house by the police where a thorough search was conducted and in the process 14 packs of assorted soft drinks valued at 560 and the tricycle engine which the complainant had earlier reported to the police as having been stolen were found in his room. Photographs were taken and the exhibits were brought to the station and retained. The accused in his cautioned statement denied the offences and stated that he had no idea of how the stolen items got into his house. After investigations he was charged with the offences stated on the charge sheet and brought before this court.

It is trite learning that in criminal trials, it is the prosecution that has the burden to prove the guilt of the accused person beyond a reasonable doubt. This burden never shifts. However when the prosecution is able to establish a prima facie case against the accused then he may be called upon to offer an explanation in his defence. Thus in the case of **Richard Kwabena Asiamah v. The Republic [2019] JELR 67945 (CA)**, the Court of Appeal held that:

“Under section 13(1) of the Evidence Act 1975 NRCD 323 and Article 19(2)(c) of the 1992 constitution, a criminal offence requires proof beyond a reasonable doubt. The burden is on the prosecution to prove all the ingredients of the offence charged. Failure to discharge this duty shall lead to the acquittal and discharge of the accused person. However, when this duty is discharged and a prima facie case is made, then an accused person may have to give an answer or explanation which raises a reasonable doubt as to his guilt. See sections 11(3), 13(2) of the Evidence Act 1975 (NRCD 323)

Pursuant to discharging their burden of proof, the prosecution filed three witness statements however, only two witnesses testified in court namely the Complainant Enoch Opoku Acheampong (PW1) and the Investigator, N0. 8342 D/PW/CPL Mavis Afi Nyarko. The prosecution tendered the following exhibits in support of their case through PW2:

- Exhibit A: The cautioned statement of the accused person
- Exhibit A1: The charge statement of the accused person
- Exhibit B: Photograph of the side view of the complainant’s ware house where the accused allegedly caused damage to
- Exhibit B1: Photograph of the front view of the complainant’s ware house

Exhibit B2: Photograph of the inside of the complainant's ware house where the drinks were allegedly stolen from

Exhibit B3: Photograph of the house of the accused at Oframase

Exhibit B4: Photograph of the room of the accused where the drinks were retrieved from

Even though the charge sheet did not state the specific subsection of section 172 under which the accused is charged on count one, looking at the value of the damage caused, it is obvious that the accused is charged under section 172 (b) of Act 29 which enacts as follows:

(b) "A person who intentionally and unlawfully causes damage to property to a value exceeding one million cedis commits a second degree felony"

To succeed, the prosecution must prove that:

1. the accused person intentionally caused the damage; and
2. the damage was caused unlawfully.

Thus in **Homenya v the Republic [1992] 2GLR 305** the court held that:

"an accused could only be liable on a charge of unlawful damage to property under section 172 (1) of the Criminal Code 1960 Act 29, where the prosecution was able to establish not only that the accused caused the damage intentionally but also that the damage was caused unlawfully".

Section 174 of Act 29, explains what will constitute an unlawful act within the meaning of section 172 and in throwing more light on this section, the learned author P.K Twumasi in his book **Criminal Law in Ghana** at page 397 states that:

“it must be proved further that the accused had no legal justification in causing the intentional damage”. He further stated that the following are circumstances under which damage can be said to have been caused unlawfully within the meaning of section 174(1) of Act 29:

1. If his act could give rise to a cause of action in any branch of the civil law, including an action for injunction; or
2. If his act could give rise to a fine or other punishment under any enactment

PW1 testified that, he went to his warehouse on the day in question around 6:00am and realised that a thief or thieves had forcibly broken into the ware house by causing damage to the burglar proof and so he reported the matter at the police station. According to PW2, when the matter was referred to him for investigation on the 7th of September, 2023, he visited the crime scene and took photographs. PW2 tendered **Exhibit B** in evidence showing a damaged burglar proof. The prosecution was thus able to prove that a damage has been caused.

The accused person denied causing damage to the said burglar proof and as such denied the charge. The prosecution thus had the huge burden of proving that it was the accused and no one else who caused damage to the burglar proof. There were no eye witnesses and so the evidence leading to the accused person being linked to the offence is thus circumstantial. The Supreme Court in **Logan & Laverick vrs The Republic [2007-2008] SCGLR 76 at 78**, held:

“Circumstantial evidence relied on by the prosecution to support a conviction, must be inconsistent with the innocence of the accused. It must lead to irresistible conclusion not only that

a crime had been committed but it was in fact committed by the persons charged in order to arrive at a definite conclusion. Conviction based on circumstantial evidence which is not supported by the facts is wrongful..."

Furthermore, the Court of Appeal in the case of **Duah v The Republic [1987-88] 1 GLR** expressed its view on circumstantial evidence which a court can rely on in these words:

Circumstantial evidence was evidence of surrounding circumstances which by undersigned coincidence was capable of proving a proposition with the accuracy of mathematics. In criminal cases, it was sometimes not possible to prove the crime charged by direct or positive evidence of persons present at the time the crime was committed. So where the testimony of eye witnesses was not available, the jury was entitled and indeed permitted to infer from those facts which the prosecution had proved other facts necessary either to complete the elements of guilt or establish innocence. However before drawing the inference of the guilt of an accused from circumstantial evidence, it was very important to make sure that there was no other co-existing circumstances which would destroy or weaken the inference. Thus circumstantial evidence has to be closely examined and acted upon only when the circumstances were such that the guilt of the accused had of necessity to be inferred and that the facts led to no other conclusion

See:

Frimpong Alias Iboman v. The Republic [2012] 1SCGLR 297

Dexter Johnson v. The Republic [2011] 2SCGLR 601;

State v. Anani Fiadzo [1961] GLR 416

In exhibit A, the accused person admitted that PW1's missing items were found in one of his rooms but insisted that he did not know how those items got into that room. He

maintained this position when he mounted the box and testified in his defence. The evidence shows that the accused person lives in that house with his wife and children alone. In **Exhibit A** which is the cautioned statement of the accused erroneously dated 9th August 2023 instead of 9th September 2023, he indicated that he rented that particular room where the items were found to a tenant who vacated two months ago. Meaning at the time he was giving his statement on the 9th of September 2023, the tenant had vacated sometime in July 2023. However, during cross examination of the accused on the 12th of October 2023, the following ensued:

Q: Will you agree with me that you stay in your own house with your wife and children?

A: The house is my father's house not my own house

Q: The house is for your father but you stay there alone with your wife and children

A: That is not true

Q: Who else stays in the house?

A: My father rented two of the rooms to two people. One is called Thunder and one is called sister Abena

Q: So are these people staying in the house

A: No

Q: When did they vacate the house?

A: About a month now

Thus while in one breath the accused suggests that the supposed tenant vacated the house in July, 2023, in another breath he says the tenant left in September 2023. This inconsistency only shows that the accused is not a credible person and was only

fabricating a story. From this, I find that the accused person stays in the house with his wife and children alone. It is therefore my view that the accused person was not able to give a reasonable explanation as to how PW1's drinks and the tricycle engine got into his room. This further shows that the accused person after causing damage to the burglar proof of PW1's ware house gained ingress into the warehouse and that is how come he was able to appropriate the items that were found in his room. This also shows that the accused committed the offence of unlawful Entry in terms of section 152 and the explanation of unlawful entry under 153 of Act 29 since he did not have the consent of PW1 to enter the building and as the evidence has established, he did so with the intention of committing a crime. Sections 152 and 153 of Act 29 provide as follows:

152 "a person who unlawfully enters a building with the intention of committing a criminal offence in the building commits a second degree felony"

153 "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"

Furthermore, the evidence established that not only did the accused person have an intention to commit a crime at the time he unlawfully entered PW1's warehouse but he actually dishonestly appropriated assorted soft drinks and a tricycle engine from PW1's warehouse which said items were found in his room thus constituting the offence of stealing which is defined under section 125 as:

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

Thus even though there was no direct evidence to prove that PW1 or any other person saw the accused person enter PW1's ware house to steal, the overwhelming evidence is

that PW1's stolen items were found in the accused person's room. The evidential burden therefore shifted on to the accused to explain how PW1's items got to his room. The accused was however not able to offer any reasonable explanation.

On the totality of the evidence adduced, it is my view that the prosecution has been able to prove the guilt of the accused person beyond reasonable doubt on all the charges. In the circumstance the accused is pronounced guilty and convicted accordingly on count one, count two and count three.

SENTENCING

In sentencing the accused, the court takes into consideration the plea in mitigation by the accused person and the period he has spent on remand pending trial in compliance with Article 14(6) of the 1992 Constitution of the Republic of Ghana. The court further takes into account the fact that the accused person's act was pre meditated and the fact that he did not plead guilty simpliciter necessitating a full trial. The accused is therefore sentenced to two years imprisonment IHL on count one, Two years imprisonment IHL on count two and five years imprisonment IHL on count three. The sentences are to run concurrently.

H/H ADWOA AKYAAMAA OFOSU (MRS)

CIRCUIT COURT JUDGE