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

B7/225/2023

THE REPUBLIC

V

ISAAC NYARKO

……

…….

TIME: 12:01

ACCUSED PRESENT

CHIEF INSPECTOR BEATRICE LARBI FOR THE PROSECUTION PRESENT

ACCUSED SELF-REPRESENTED

JUDGMENT

The accused person herein is before this court on a charge of stealing contrary to section 124 of the **Criminal Offences Act 1960 (Act 29)**. He was arraigned before the court on the

26th of July 2023 and when the charge was read to him, he pleaded not guilty. His plea thus put the facts in issue and therefore the case was set down to enable the prosecution prove what they allege against the accused.

The antecedents to the case are that the complainant Abdul Mumuni Hamidu is a trader and a resident of Kwahu Atibie and trades in mobile phones. The Accused Isaac Nyarko is also a carpenter residing at Kwahu Bepong. In the year 2021, the complainant was trekking within the Kwahu Bepong Township with his mobile phones. About 2:00pm same day the accused saw the complainant selling a phone to a prospective buyer at Bepong. The accused called the complainant to come to him when done with his customer. From there the complainant went to the accused who showed interest in buying any of the phones. The accused demanded of the complainant to show his phones to him. The complainant obliged and gave one Samsung mobile phone to the accused. The accused requested the complainant to give him another phone whilst still having the Samsung phone. The complainant gave him a carlos phone and just when the accused got hold of the second phone he bolted with the two phones. A report was made to the police at Bepong but the accused could not be traced as he went into hiding.

On the 20th of July 2023, the complainant spotted the accused at a place near Bepong and caused his arrest. The accused was rearrested and during interrogation, he admitted the offence and stated that he personally used the two phones. The accused was cautioned and after investigations he was charged with the offence and arraigned before court.

It is trite learning that under Article 19(2) of the 1992 constitution, everyone charged with a criminal offence is presumed innocent until the contrary is proved. In other words whenever an accused person was arraigned before any court in any criminal trial, it is the duty of the prosecution to prove the essential ingredients of the offence charged against the accused person beyond reasonable doubt. The burden of proof is therefore on the

prosecution and it is only after a prima facie case has been established by the prosecution that the accused person will be called upon to give his side of the story. See: **Gligah & Atiso vrs. The Republic [2010] SCGLR 870**

Thus while the burden of persuasion remains on the prosecution throughout the trial, the evidential burden shifts as and when it becomes appropriate. This is stated in section 15 of the **Evidence Act 1975 (NRCD 323)** which enacts that:

"unless and until it is shifted , the party claiming that a person is guilty of crime or wrong doing has the burden of persuasion on that issue."

The prosecution in order to discharge their burden of proof led evidence through two witnesses being the complainant Abdul Mumuni Hamidu, PW1 and the investigator Detective Inspector Samuel Frimpong. The prosecution tendered in evidence the cautioned statement of the accused marked as **Exhibit A** and the Charge statement of the accused marked as **Exhibit B**

Section 124 of Act 29 under which the accused is charged provides as follows:

"whoever steals commits and second degree felony"

Section 125 of Act 29 further defines stealing thus:

"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.

Furthermore, **Section 122 of Act 29** defines acts which will constitute appropriation as follows:

(1) "An appropriation of a thing by a trustee means dealing with the thing by the trustee with the intent of depriving a beneficiary of the benefit of the right or interest in the thing or in its value or proceeds or a part of that thing.

(2) an appropriation of a thing in any other case means any moving, taking obtaining, carrying away or dealing with a thing with intent that a person may be deprived of the benefit of the ownership of that thing or of the benefit of the right or interest in the thing or in its value or proceeds or part of that thing"

According to P.K. Twumasi in his book **Criminal Law in Ghana at page 307**, the fundamental assumption underlying our law of stealing can therefore be tersely expressed in the concept that someone or another person has a proprietary right or interest in anything that is capable of being stolen. The fact that the owner is known or unknown does not make a difference and therefore any person having no claim of right or ownership or any proprietary interest, however small it may be, but who nevertheless appropriates the property, does nothing more than to deprive the owner of his property and therefore commits the felony of stealing.

In the instant case there is no contention on the fact that the mobile phones in question did not belong to the accused person. PW1 testified that he trades in mobile phones. That sometime in 2021 at about 2:00 pm he was in Bepong Township trekking with his mobile phones and on reaching Free Town a suburb of Bepong at a spot where some masons were working, the masons called him to buy a phone.

PW1 further told the court that whilst he was with the masons, the accused person told him to come when he was done with the masons so when he finished with the masons, he went to the accused who requested to see his products. He first gave him a Samsung phone and then the accused also requested to see another one which he gave to him. According to PW1, as soon as the accused got hold of the second phone, he took to his heels with both phones. He told the court that he could not chase the accused because he was amazed. He asked of his name from the masons who told him the accused is called Pumpi Asaase and showed him his house.

PW1 again testified that he went to the accused person's house and met his grandmother and he narrated what had happened to her. The accused person's grandmother pleaded with him not to curse the accused. From there he went to lodge a complaint at the police station but the accused could not be traced. That on the 20th of July, while he was trekking he saw the accused at a certain sawn mill at Bepong and caused his arrest. PW2 rehashed PW1's story and tendered the exhibits mentioned above in support of the prosecution's case.

Even though the accused person denied the offence in court, in **Exhibit A**, the cautioned statement of the accused which is a confession statement, he admitted the offence and went on to state that, he had bought a mobile phone from PW1 previously but that phone did not last and it got spoilt so he confronted PW1 and asked him to replace it for him but PW1 told him there was no warranty on the phone but he could take it back and sell

it for him. That he did not see the complainant again until the day of the incident that led to the instant case.

From the details the accused gave in **Exhibit A**, there is no doubt that the accused person knows PW1 very well and PW1 also knows the accused very well and so there can be no question of mistaken identity. From the evidence therefore, it is clear that there was an appropriation of the phones and same was dishonest because PW1 did not give his consent for the accused to go away with the phones.

At the close of the case for the prosecution, the court found that the prosecution had been able to establish a prima facie case against the accused and so he was called upon to open his defence.

The accused person simply denied the offence in his evidence in court and stated that he does not even know PW1 from anywhere and he has not stolen his phones. During cross examination of the accused, the following transpired

Q: I am putting it to you that you admitted in your own cautioned statement that you took the phones from the complainants

A: I was not the one who said that

Q: You agree with me that you gave the statement at your own free will at the police station

A: Yes, but I was not the one who said that

Q: After the investigator wrote your statement, how did you endorse it?

A: I thumb printed it

Q: Were you forced to thumbprint

A: No

From the foregoing, I find that the accused person gave the said statement voluntarily wherein he admitted the offence. The Court of Appeal in the case of **Odupong v The Republic [1992-93] GBA 1038** held:

The law is 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.

In the instant case, the accused offered no reasonable explanation to the contradiction in his evidence in chief and the statement he gave at the police station. I therefore reject the accused person's defence that he does not know the complainant and has not stolen his phones.

On the basis of the foregoing, it is my humble opinion that the prosecution have ably discharged their burden of proving the guilt of the accused person beyond reasonable doubt. He is accordingly found guilty and convicted.

SENTENCING

In sentencing the accused, I have taken into consideration the plea in mitigation by the accused person, the fact that he is a first time offender and the period he has spent in custody in accordance with article 14(6) of the 1992 Constitution of the republic of Ghana. I have also taken into consideration the fact that the accused knowing very well that he committed the offence, did not plead guilty simpliciter but wasted the Court's time to go

through full trial and also the fact that the accused has not been able to make any restitution. I therefore sentence the accused to four (4) years imprisonment IHL.

H/H ADWOA AKYAAMAA OFOSU (MRS)

CIRCUIT COURT JUDGE