

IN THE CIRCUIT COURT HELD AT KIBI IN THE EASTERN REGION ON
FRIDAY THE 15TH DAY OF SEPTEMBER 2023 BEFORE H/H PETER OPPONG-
BOAHEN, ESQ CIRCUIT COURT JUDGE

CASE NO. B7/72/23

THE REPUBLIC

VRS

PETER MALIK ANIMADIFO

JUDGMENT

~~First complainant, John Kpordenu, 2nd complainant, Evans Dakiney, 3rd complainant,~~
Tony Kofi Amuzu, and 4th complainant Madam Deborah Afriyie Mensah are a farmer,
Ghana Cocoa Board Officer at Wirekyire Amanfrom, a mason and a business woman
respectively and all reside at Aposs Prayer Camp Okanta. 5th complainant, who is
stationed at Wirekyire Amanfrom Police Station, is a Community Police Assistant.
Accused Peter Malik Animadifo is a footballer and lives at Ada in the Greater Accra
Region of Ghana. On 18/6/23 at about 2:00 am, accused went to Aposs Prayer Camp
near Akyem-Odumase, unlawfully entered the room of 1st complainant and made away
with his infinix Hot 9 mobile phone valued GHc1500.00, one iPhone valued
GHc1300.00, footwear valued GHc700.00 and a bag containing clothing valued
GHc1000.00, all to the total sum of GHc3800.00. Accused proceeded to the room of 2nd
complainant and unlawfully entered his room and made away with a round neck T-
shirt, a boxer shorts and one wrist watch, all to the total sum of GHc500.00. Accused
continued with his mission and unlawfully entered the room of 3rd complainant and
stole his Tecno mobile phone valued GHc400.00 and went away with all the booty. On

same day 18/6/23, accused was arrested by police and detained for investigation. Investigation cautioned statement was obtained from him and he admitted the offences. On 19/6/23 at about 10:00 am whilst accused was in custody at Wirekyire Aman from Police Station he suddenly became wild and threatened 4th complainant with words to wit: 'if I return from prison, I will shoot you with a gun and kill you.' Accused also threatened 5th complainant with words to wit: 'I will kill you if I am released from cells.' Photographs of the stolen items retrieved from the accused were taken for evidential purpose. After investigation, accused was charged with the offences as stated on the charge sheet and arraigned before this court to stand trial.

It is upon these facts that the accused person herein; Peter Malik Animadifo, aged 29 years was charged with three (3) counts of Unlawful Entry contrary to section 152 of the Criminal offences Act, 1960 (Act 29), three (3) counts of Stealing contrary to section 124(1) of the Criminal Offences Act 1960(Act 29) and two (2) counts of Threat of Death contrary to section 75 of the Criminal Offences Act 1960(Act 29).

Accused pleaded Not Guilty to all the eight (8) counts and hence this trial.

It is a trite law that when an Accused person pleads 'Not Guilty', everything is in issue.

Prosecution, in proof of its case, called four (4) witnesses including the investigator.

PW1, Cecilia Ohemeng Adomako, in her testimony, asserted that accused threatened to kill her upon her release from prison.

PW2, Tony Kofi Amuzu and **PW3 Evans Dinakey** testified to the effect that accused unlawfully entered their rooms in their absence and made away with the items in Exhibit B.

PW4, Inspector Moses Dakudzi, the investigator in this case, told the court that on 18/6/23 the complainant reported a case of stealing against the accused and upon his

arrest , he cautioned him. He testified he photographed the stolen items and later charged accused with the stated offences on the charge sheet. He tendered in evidence without objection the investigation cautioned statement of the accused, photograph of the stolen items retrieved from accused and charge statement of the accused which were admitted and same were marked as **Exhibits A, B and C** respectively.

In his defence to the charges preferred against him, accused denied committing those offences both in his evidence in chief and under cross examination.

ISSUE(S)

In determining this case, the following issues were set down for trial:

- 1) Whether or not accused unlawfully entered the rooms of John Kpordenu, Evans Dinakey and Tony Kofi Amuzu with intent to commit crime to wit: stealing
- 2) Whether or not accused did dishonestly appropriate one iPhone, one infinix hot 9 phone, foot wear, a bag containing clothes all to the total value of GHc3800.00 the property of John Kpedenu, one boxer shorts, one wrist watch, one long sleeve shirt and one round neck T-shirt all to the total value of GHc500.00 the property of Evans Dinakey and one Tecno phone valued GHc400.00 the property of Toney Kofi Amuzu.
- 3) Whether or not accused did threaten to kill one Deborah Afriyie and one Miss Cecilia Ohemeng Adomako.

BURDEN OF PROOF

In this trial, prosecution is enjoined by law to prove the guilt of the Accused beyond reasonable doubt as provided in the Evidence Act, 1975 (NRCD 323) sections 11 (2) and 13 (1)). Similarly, in the case of *Republic v District Magistrate Grade II*

Osu;ExparteYahaya[1984-86] 2 GLR 361-365, Brobbey J (as he then was) stated as follows:

‘One of the cardinal principles of criminal law in this country is that when an accused person pleads not guilty, his conviction must be based on evidence proved beyond reasonable doubt’.

...What ‘proof beyond reasonable doubt’ means is proof of the essential ingredients of the offence charged and not mathematical proof? See *Frimpong(Alias Iboman) v the Republic*[2012] 45 GMJ 1 SC. In the case of *Oteng v The State* [1966] GLR 352 at 355 the Supreme Court stated as follows:

‘One significant respect in which our criminal law differs from civil law is that while in civil law, a plaintiff may win on a balance of probabilities; in a criminal case the prosecution cannot obtain conviction upon mere probabilities’.

At page 355 Ollenu JSC stated further:

‘The citizen too is entitled to protection against the state and that our law is that, a person accused of a crime is presumed to be innocent until his guilt is proved beyond reasonable doubt as distinct from fanciful doubt’.

Also, the Supreme Court has held in the case of *COP v Isaac Antwi* [1961] GLR 408 that the fundamental principles underlying the rule of law are that the burden of proof remains throughout on the prosecution and the evidential burden shifts to the Accused only if at the end of the case for the prosecution an explanation of circumstances peculiarly within the knowledge of the Accused is called for. In that case, the Accused bears the evidential burden to raise the issue or defence of their existence. Thus, the Accused is merely required to raise doubt on the balance of probability. *See also section 10(3) of the Evidence Act, NRCD 323*

The burden on the prosecution to prove the guilt of the Accused is a burden to prove all the elements of the offence beyond reasonable doubt.

ISSUE 1

The offence of Unlawful Entry is created for under section 152 of the Criminal Offences Act 1960(Act 29) as follows:

‘A person who unlawfully enters a building with the intention of committing a criminal offence in the building commits a second degree felony.’

The explanation as to unlawful entry in Section 153 is to the effect that 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.

From section 152 of Act 29, the following elements must be proven by the prosecution

- a. That a person enters a building
- b. His entry into the building is unlawful
- c. That his intention of entering the building is to commit a criminal offence

It is the case of prosecution that on the 18th day of June, 2023 accused went to Aposs Prayer Camp near Akyem- Odumase and unlawfully entered the rooms of John Kpordenu, Evans Dinakey and Tony Kofi Amuzu and made away with some items. According to PW2, Kofi Amuzu on 18//6/23 he was sleeping in the room he is occupying at the Aposs Prayer Camp with four other people who were not in the room at that time unlocked due to the fact that anyone of them could come into the room at any time. In his testimony, he said he woke up and detected that his Tecno phone valued GHc400.00 was stolen. He then inquired from his roommates but none of them had knowledge about it. He further testified that on the same day 18//6/23 the accused

was arrested by the police and detained at Wirenkyire-Aman from police station and some items were retrieved from him. He finally said he went to the police station and found his Tecno phone among the stolen items by the accused.

PW3, Evans Dinakey corroborated the evidence of PW2 and testified that he also lives at Aposs Prayer Camp. According to him, on the same day 18/6/23 he returned from all night prayers at about 2:00 am and detected that some thief unlawfully entered his room and made away with his round neck T-shirt, wrist watch and a boxer shorts all valued GHc500.00. He also proceeded to the Wirenkyire-Aman from police station when he learned accused has been arrested and detained at the said police station. On arrival at the police station, he testifies, he found his stolen items were among the retrieved items from the accused.

It is worth stating that during cross examination on prosecution witnesses accused did not challenge these pieces of evidence. His only concern was how the alleged stolen item (phone) came to the custody of the prosecution witness. The prosecution witness testified the police took photograph of all the stolen items before handing it over to him. It is trite that when a party fails to cross examine on a piece of evidence he is deemed to have acknowledged and admitted the same. See the case of *Prah v The Republic* [1962]

In sum I find that prosecution has been able to prove the guilt of accused as required by law. I find the accused guilty of the offence of unlawful entry and convict him accordingly.

ISSUE 2

Whether or not accused did dishonestly appropriate one iPhone, one infinix hot 9 phone, foot wear, a bag containing clothes all to the total value of GHc3800.00, the property of John Kpordenu, one boxer shorts, one wrist watch, one long sleeve shirt and

one round neck T-shirt all to the total value of GHc500.00, the property of Evans Dinakey and one Tecno phone valued GHc400.00 the property of Toney Kofi Amuzu.

Accused person was also charged with the offence of stealing contrary to section 124(1) of the Criminal Offences Act, 1960(Act 29).

Stealing is defined in section 125 of the Criminal Offences Act, 1960(Act 29) as follows:

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

Twumasi J, in the case of *Brobbey & Others v The Republic [1982-83] GLR 608-616*, stated as follows:

‘Three essential elements of the offence of stealing become obvious and they are:

1. That the person charged must have appropriated the thing allegedly stolen.
2. That the appropriation must have been dishonest.
3. That the person charged must not be the owner of the thing allegedly stolen.’

Thus from the above, it is incumbent on the prosecution to show that the accused persons appropriated the items (supra) belonging to the complainants dishonestly.

In the case of *Salifu v The Republic [1974] 2GLR 291*, Ata-Bedu J stated:

‘There is no doubt that the crucial ingredient or element in a charge of stealing is dishonest appropriation.’

It is provided in Section 122(2) the Criminal Offences Act 1960(Act 29) that:

‘An appropriation of a thing in any other case means any moving, taking, obtaining, carrying away, or dealing with a thing, with the intent that some person may be deprived of the benefit of his ownership, or of the benefit of his right or interest in the thing, or in its value or proceeds, or any part thereof’.

The testimonies of prosecution witnesses especially PW2 and PW3 are that they occupy some rooms at Aposs Prayer Camp and on the 18th day of June, 2023 they went out in the night for some programme and on their return at about 2:00 am they detected their valuable items have been stolen. It is their testimonies that they inquired from their roommates about the theft but they had no knowledge about it. According to them, they learned that on the same day 18/6/23 accused was arrested by the police and detained at Wirekyire-Amanfrom Police Station for the offence of stealing. In their testimonies they said they went to the police station to ascertain the veracity or otherwise of that piece of information and to their surprise they found that their stolen items were among the retrieved items from the accused.

Though accused denied committing the offence of stealing in his testimony and under cross examination, his cautioned statement to the police is on the contrary. He admitted the offence in his cautioned statement to the police but however prayed for forgiveness. He stated thus in Exhibit A:

'.....I am a footballer and live at Big-Ada and on 18/6/23 at about 2:00 am some group of people from Aposs Prayer Camp arrested and brought me to police station that I have stolen mobile phones, clothing and bags which I admitted that I have stolen the above items mentioned and I plead for forgiveness and temper justice with mercy but the laptop computer belongs to me.'

It must be stated without mincing words that the evidence of the accused that he did not dishonestly appropriate the items supra in his testimony and under cross examination can only be an afterthought. He did dishonestly appropriate the said items as per Exhibit A (cautioned statement). Quite obviously, it will not be wrong to state that this confession of the accused collaborates the evidence of PW2 and PW3 that upon accused's arrest and detention at the Wirekyire-Amanfrom police station, the stolen items belonging to PW2 and PW3 were found with him.

In Koranteng v The Republic unreported CA dated 19/7/68 the Court of Appeal held that:

'A voluntary confession of guilt which is fully consistent and probable is regarded as the most satisfactory evidence wherever there is independent proof that a criminal act has been committed.'

Having carefully examined the totality of trial and the evidence adduced so far before me, I find that sufficient evidence has been adduced by prosecution to prove its case beyond reasonable doubt as required by section 13(1) of the Evidence Act, 1975(NRCD 323) that the accused committed the offence of stealing as charged. Thus accused appropriated one iPhone, one Infinix hot 9 phone, foot wear, a bag containing clothes all to the total value of GHc3800.00, the property of John Kpordenu, one boxer shorts, one wrist watch, one long sleeve shirt and one round neck T-shirt all to the total value of GHc500.00, the property of Evans Dinakey and one Tecno phone valued GHc400.00 the property of Tony Kofi Amuzu, that the appropriation was dishonest and that accused is not the owner of the items mentioned supra allegedly stolen.

For the foregoing reasons I find accused guilty of the offence as charged and I accordingly convict him.

ISSUE 3

Whether or not accused did threaten to kill one Deborah Afriyie and one Miss Cecilia Ohemeng Adomako

The provision in Section 75 of the Criminal Offences Act 1960(Act 29) states:

'A person who threatens any other person with death, with intent to put that person in fear of death, commits a second degree felony,'

In the case of *Behome v The Republic [1979] GLR 112*, the court held that in the offence of threat of death, the actus reus would consist in the expectation of death which the offender creates in the mind of the person threatened whilst the mens rea would also consist in the realization by the offender that his threats would produce that expectation.

Before I proceed to analyze this issue as against the evidence led by the prosecution, I must point out that accused was never charged as required by law in respect of counts seven (7) and eight (8) but prosecution wrongly put those two counts on the charge sheet creating the impression that accused was formally charged by the investigator. In criminal law, a charge or count is a statement accusing a person of an offence upon which the accused will be tried. It is imperative that the accused be charged with specific crime for which he has been arraigned before the court. In the instant case accused has been hauled to this court with three (3) counts of Unlawful Entry contrary to section 152 of the Criminal offences Act, 1960 (Act 29), three (3) counts of Stealing contrary to section 124(1) of the Criminal Offences Act 1960(Act 29) and two (2) counts of Threat of Death contrary to section 75 of the Criminal Offences Act 1960(Act 29).

It is apposite to state that the first page of **Exhibit C**(charge statement) lends credence to the fact that accused was never charged on counts seven(7) and eight(8). It reads as follows:

'Name: Peter Malik Animadifo

Occupation: Footballer

Age: 29 years

Hometown: Big-Ada

You Peter Malik Animadifo, you are charged with the offences of unlawful entry contrary to section 152 of the Criminal Offences Act 1960(Act 29) and stealing contrary to section 124(1) of the Criminal Offences Act 1960(Act 29). Do you want to say anything in answer to the charges? You are not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and may be given in evidence. You are also reminded of your right to consult a counsel of your choice.'

Even though **PW1, Cecilia Ohemeng Adomako**, who is a Community Police Assistant stationed at Wirekyire-Amanfrom police station testified to the effect that accused threatened to kill her whilst he was in custody at the said police station, PW1 first abused accused by accusing him of being a thief as alleged by accused. Unfortunately, PW1 could not substantiate her claim of threat of death by accused. Perhaps she thought she could use her position as a community police assistant to place him in a situation where he will be convicted and sentenced but she misfired. **PW4, Inspector Moses Dakudzi** who investigated the case did not help matters; he did a shoddy work. He failed to even caution accused when PW1 alleged accused threatened to kill her. I am of the view that the assertion by PW1 is a mere conjecture which should not be accepted. I, however, find the assertion by accused reasonable probable. Notwithstanding this assertion of accused, prosecution breached procedural rules as required by law. In fact there was no case against accused at all in respect of counts seven (7) and eight (8).

For the foregoing reasons, accused is acquitted and discharged on counts seven (7) and eight (8).

Accused was convicted on counts one (1), two (2), three (3), four (4), five (5) and six (6).

In sentencing the accused the court takes into consideration the fact that accused is a first offender and has been in custody for almost three (3) months, has pleaded with the

court to temper justice with mercy. Accused seems remorseful and repentant. The court shall give him the opportunity to reform. However, the court shall impose the following sentence on him to serve as prevention and deterrent to him and to other perpetrators of the law.

On count one accused is sentenced to a fine of two hundred (200) penalty units or in default serves a prison term of 18 months.

Accused person is sentenced to a fine of three hundred (300) penalty units on count two or in default 24 months prison term.

On count three, accused is also sentenced to a fine of two hundred (200) penalty units or in default 18 months imprisonment.

On count four (4) accused is sentenced to a fine of three hundred (300) penalty units or in default serves a prison term of 24 months.

Accused person is sentenced to a fine of two hundred (200) penalty units on count five (5) or in default 18 months prison term.

On count six (6), accused is also sentenced to a fine of three hundred (300) penalty units or in default 24 months imprisonment.

Sentences shall, however, run concurrently.

The retrieved items should be restored to the complainants

**H/H PETER OPPONG-
BOAHEN, ESQ
(CIRCUIT COURT JUDGE)**

15/09/23

REPRESENTATION

D/INSPECTOR JAMES K. NABUNE FOR THE REPUBLIC