

IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON THURSDAY, 28<sup>TH</sup> DAY OF MARCH 2024 BEFORE HIS HONOUR KWABENA KODUA OBIRI-YEBOAH, CIRCUIT COURT JUDGE.

D3/14/2023

THE REPUBLIC

VRS

VICTOR OSMAN

### JUDGEMENT

The accused was arraigned before the Court on three counts:

1. Unlawful Entry: contrary to section 152 of the criminal and other offences Act, 1960 (Act 29).
2. Causing Unlawful Damage: Contrary to Section 172 (1(b)) of the Criminal Offences Act 1960 (Act 29).
3. Stealing: Contrary to section 124 (1) of the Criminal Offences Act 1960 (Act 29).

The law provides under **sections 173 and 174** of the **Criminal and Other Offences Procedure Act, Act 30** as follows:

*173. Acquittal of accused when no case to answer*

*At the close of the evidence in support of the charge, it appears to the Court that a case is not made out against the accused sufficiently to require the accused to make a defence, the Court shall, as to that particular charge, acquit the accused.*

*174. The defence*

*(1) At the close of the evidence in support of the charge, if it appears to the Court that a case is made out against the accused sufficiently to require the accused to make a defence, the Court shall call on the accused to make the defence and shall remind the accused of the charge and inform the accused of the right of the accused to give evidence personally on oath or to make a statement.*

*(2) The Court shall then hear the accused if the accused desires to be heard and the evidence the accused may adduce in defence.*

By these provisions, at the end of the case of the prosecution, the court came to the conclusion that a case has been made against the accused person.

The facts of the case as attached to the charge sheet is that Complainant in this case Alasane Sana is a businessman residing at Airport Hills, Accra. Whiles accused person Victor Osman is a Nigerian National residing at Lake Sides Estates Adenta Accra. On 19<sup>th</sup> March 2023 at about 4:00am complainant and his family were asleep when the accused person unlawfully scaled their neighbour's fence wall and entered complainant compound. He climbed a pillar to the balcony of the building on the last floor and forcibly opened the sliding glass door leading to the complainant hall. He entered the bedroom and stole seven assorted wrist watches value at USD 50,000 dollars equivalent to GHC 562, 500.00 from the complainant wardrobe, Gold plated iPhone 8 valued at USD 16,000 dollars equivalent to GHC 180,000 cash amount of USD 1000 and 550 Euro all equivalent to GHC 11,250 and GHC 6747.84 respectively and also cash amount of GHC 25,000 together with other valuable official documents. Complainant was awoken by unusual noise in his room and saw the accused person. The accused on seeing the complainant started running to the down floor.

The complainant raised an alarm amidst shouting which got the attention of the neighbours but the accused person manages to escape by scaling the fence wall at the

back house. The complainant went to the police station to lodge a complainant. At the charge office the complainant sported the accused person. He identified him as the one who came to his house to steal on the 19<sup>th</sup> March 2023 and subsequently the accused person was arrested. The accused was immediately interrogated and he admitted going to the complainant house to steal. Accused person mentioned one Alex Mensah as the one whom he claim gave the stolen items to for safe keeping. The said Alex Mensah could not be traced. On 1<sup>st</sup> April, 2023 Alex Mensah came to the Police Station and he was arrested. He denied any knowledge of the offence. Later, the accused led police to his house at Lake Side estated at Adenta Accra and when a search was conducted in his room in his presence, one gold plated watch, one rose gold patak philipe leather strap wrist watch, gold plated iPhone 8 back housing, two gold bracelets, one pair of gold ear ring, and cash amount of GHC 6,900, Naira 6000 and USD 1 being part of the stolen items from the complainant house were retrieved. After investigation the accused person was charged with offence and arraigned before the court.

Accused appearing before the court pleaded not guilty to the charge proffered against him. It is trite law that in a criminal case, when an accused pleads not guilty to an offence, pursuant to S.11 (2) of the Evidence Act, 1975 (NRCD 323), *the burden of proof is on the prosecution*; and the **standard of proof** has to be **beyond reasonable doubt** as stated in **Section 13(1) of the Evidence Act, 1975 (NRCD 323)** and affirmed in the case **DARKO v THE REPUBLIC** [1968] GLR 203. There is no burden on the accused. See: **COP v Isaac Antwi** (1961) GLR 408 @ 412, **Nkansah v The Republic** (1980) GLR 184.

The accused was produced before the court differently constituted on 4<sup>th</sup> April, 2023 when his plea was taken on the charge sheet which was filed on 29<sup>th</sup> March, 2023. From the records the accused was present before the court on the 2<sup>nd</sup> of May, 2023. The prosecution filed an amended charge sheet on the same day. The accused was also

present on the next adjourned date which was 17<sup>th</sup> May 2023 and the case was adjourned by the court.

On the 13<sup>th</sup> of June, 2023 the accused was absent from the court and Counsel for the accused prayed the court for an adjournment for the accused to be produced before the court. This was granted by the court and the case was adjourned to 27<sup>th</sup> June, 2023 and the court stated, "... adjourned to 27<sup>th</sup> June, 2023 for plea on the amended charge sheet". On the next adjourned date which was the 27<sup>th</sup> June, 2023 the accused was again absent and bench warrant was issued for the arrest of the accused. From then the prosecution could not execute the bench warrant on the accused and the accused never appeared before the court again and the case was adjourned for a number times before the court differently constituted.

On the 15<sup>th</sup> of September, 2023 by an order of transfer signed by the Judicial Secretary, the Chief Justice, transferred the case to this court. At this time the prosecution was still not able to execute the bench warrant to produce the accused before the court and their attempt at getting the sureties to produce the accused has also not been successful. The case was first called before this court on 14<sup>th</sup> November, 2023 and on that day this was the submission of the prosecution, "The sureties are to produce the accused person but they have not been able to produce them. We pray for an adjournment as the prosecution takes steps to have this matter tried in the absence of the accused persons".

On the next adjourned date 12<sup>th</sup> December, 2023, prosecution again submitted that "at the last court date we indicated the accused is on the run, actually jumped bail and we are also preparing to evoke Article 19 to prosecute in the absence of the accused. We have filed a motion this morning and we have been given 19<sup>th</sup> December, 2023 for motion to be moved." On the 20<sup>th</sup> of February, 2024 application for hearing to proceed in the absence of the accused was granted by the court.

Afterwards the prosecution called their two witnesses before the court to prove the three charges brought against the accused on the amended charge sheet. However from the records as indicated the accused plea on the amended charge sheet was to be taken after the court adjourned the case on the 13<sup>th</sup> June, 2023 as the accused was absent from court. The accused on the next adjourned date was absent and he never appeared before the court until the case was transferred to this court. This means that after the prosecution filed the said amended charge sheet, the plea of the accused was not taken on the said charges amended against the accused person.

The principle on the accused plea taking on charges brought against him is that, accused plea must always be taken and when ever the charge is amended or substituted with a new one, as is the situation before the court, the accused should be invited to plead to the new charge. As is the case before this court, as has been noted already, the plea of the accused on the amended charges was not taking and the accused again was never produced before this court. In the case of *Mensuo v The Republic* (1971) 2 GLR 30, it was held that the absence of a valid plea being taken from the accused in accordance with Act 30, section 171 (1) renders the whole trial null and void. See also *Chidia v The Rep.* (Practice Note) (1978) GLR 81.

Looking at this case where the accused knows of the case pending before the court and the accused has refused to appear and his plea was taking on a charge sheet was later amended but prosecution has not been able to produce the accused all these while, the case will be struck out so that anytime the accused is arrested he can be tried on the amended charge sheet as has been filed by the prosecution. The case will therefore be struck as the prosecution has not been able to execute the bench warrant over all these period when the bench warrant was issued. Case is therefore struck out.

