

**IN THE TDC DISTRICT COURT HELD AT TEMA ON THURSDAY, THE
15TH DAY OF DECEMBER 2022 BEFORE HER HONOUR AKOSUA
ANOKYEWAA ADJEPONG (MRS.), CIRCUIT COURT JUDGE, SITTING AS
AN ADDITIONAL MAGISTRATE**

CASE NO.: B9/2/2022

THE REPUBLIC

VRS

- 1. RAYMOND KLUTSE**
 - 2. OSMANU ABUBAKARI**
-

1ST ACCUSED PERSON PRESENT

2ND ACCUSED PERSON ABSENT (DEALT WITH)

COMPLAINANT PRESENT

CHIEF INSPECTOR DORIS DOE FOR THE REPUBLIC PRESENT

NO LEGAL REPRESENTATION FOR THE ACCUSED PERSONS

JUDGMENT

The accused persons were arraigned before this Court charged with Causing Damage contrary to *section 172*, Stealing contrary to *section 124(1)* and Dishonestly Receiving contrary to *section 146* of the *Criminal and Other Offences Act, 1960 (Act 29)* respectively.

The charges were read out and explained to the accused persons in their choice of language being Ga. The 1st accused person pleaded not guilty on counts one and two and the 2nd accused person pleaded guilty on count three.

Accordingly the 2nd accused person was convicted on his own plea on count three; and dealt with according to Law. This judgment therefore is in relation to the trial conducted by this Court on counts one and two being the charges against the 1st accused person.

The facts of the case as presented by the prosecution are that the complainant Ernest Panful is the Principal Security Officer of Ghana Ports and Harbour Authority (GPHA) Tema Fishing Harbour. A1 Raymond Klutse is a fisherman aged 23 years residing at Awudum a suburb of Tema Newtown; and A2 Osmanu Abubakari aged 48 years is a metal scraps dealer living at Abonkor a suburb of Tema Newtown. On 29th March 2022, the Head of Electrical Department of GHPA complained to the complainant that on 28th March 2022 he received a report from his subordinate who was for night shift at the Fishing Harbour that the street lights on the wharf leading to where the power ship was located went off. That the Head of Electrical Department went and inspected the area and detected that electrical cable about 300 meters long connecting power to the street lights were cut and pulled from the pipes. Report was made to the police and A1 was arrested on suspicion. During investigation A1 denied knowledge of the crime but mentioned Evans Klutse and four others whom he claimed could be identified when seen as the perpetrators of the crime. He then led police to a scraps yard at community one site 2 where he claimed the five persons sold the cables; and some of the cables were retrieved. That police invited the owner of the scrap yard but has since failed to honour the invitation. That on 6th April 2022, intelligence led to the arrest of A2 and confessed during interrogation and stated in his cautioned statement that A1 and three others sold a piece of electrical cable that weighed 4kg at 240.00 to him on 28th March 2022 and he also sold same out. A1 was interrogated and he told the police that he together with

one 'Damage'. One 'Oldman' and Nuetey stole some of the cable on the said 28th March 2022 and sold same to A2, and stated further that Evans Klutse and four others also stole some of the cables on 7th April 2022. That investigation is ongoing for the arrest of all the perpetrators.

At the trial, the prosecution called three (3) witnesses.

Evidence of PW1

PW1 stated in his evidence to the Court that he lives at Community 5, Tema and is the Principal Security Officer of GPHA Tema Fishing Harbour. That on 29th March 2022 at about 7:00am, the Head of GPHA Electrical Department, Fishing Harbour called him and reported to him that on 28th March 2022 he received a report that the street light leading to where the Power Ship was located were off and that he suspected and detected that the electrical cables of about 3000 meters long had been cut and taken away by the accused persons. That A1 was arrested upon this information at Water land near the European market at Fishing Harbour. That he visited the scene and saw things for himself and thereafter organized his men to search the scrap yards within the Port area where they found some of the cables in a scrap yard belonging to one Arafat Ali and sent same to their office. That the said Arafat told them that there is another scrap yard at Community 1, Tema where he suspects the rest of the cables were sold. That they went to the scrap yard at Community 1, Tema with two police CID men from Fishing Harbour and found the remaining cables and arrested the accused person.

Evidence of PW2

PW2 gave his name as Osman Abubakari and told the Court that he lives at Abonkor a suburb of Tema Newtown. That he is scrap dealer; and knows A1, Raymond Klutse. According to *PW2*, during the month of March 2022, he was under the shed at canoe beach Fishing Harbour when A1 and three others came with a sack containing electrical cables to sell as scraps. That he weighed the cable and it was 4 kilos and he paid 240.00 to them. That on 6th April 2022 he was at the canoe beach when police came and arrested him that the cable he bought from A1 and the three others was stolen; that he was put before Court and was convicted accordingly.

Evidence of PW3

PW3 (Investigator) told the Court that on 29th March 2022, this case was referred to him for investigation and he obtained statement from the complainant. That on 4th April 2022 A1 was arrested and cautioned statement was obtained from him. That A1 led police to a metal scrap yard at community 1, site 2 where he claimed his cousin Evans Klutse and three others sold some of the cables. That the scrap yard owner was invited to assist investigation but he failed and police further went to the scrap yard to arrest the yard owner but could not find him. That A2 was later arrested and he mentioned A1 and three others as those who sold the electrical bale to him at 240.00. He concluded that further cautioned statement was obtained from A1 and charge statement was also obtained from him. *PW3* tendered in evidence the caution statements and charge statement of A1 as exhibit 'A', 'A1' and 'A2'.

Thereafter, the prosecution closed its case.

At the end of the case of the prosecution, the Court examined the evidence of the prosecution witnesses to determine whether a prima facie case had been made by the prosecution to warrant the 1st accused person to open his defence. The Court then gave a ruling that a prima facie case had been made and the evidential burden had shifted to the 1st accused person to raise a reasonable doubt in the case of the prosecution.

In the case of *The Republic v District Magistrate Grade II, Osu, Ex parte Yahaya* [1984-86] 2 GLR 361 – 365 Brobbey J (as he then was) stated that:

“...evidence for the prosecution merely displaces the presumption of innocence but the guilt of the accused is not put beyond reasonable doubt until the accused himself has given evidence.”

In view of the above, the Court found that the 1st accused person had a case to answer and was therefore called upon to enter into his defence.

OPENING OF DEFENCE

In opening his defence the 1st accused person testified in open Court that he is a fisherman and lives at Awudum, Tema Newtown. That he knows the complainants as workers of GPHA. He continued that he does not know anything about this case. That he just met some people who asked him if he can show them where to sell their scraps so he led them to a place. That when they got there the scrap was weighed and it was 240kg. That they were paid after that and they left. The accused person further testified that he later got to know that the scraps were stolen from the harbor. That he does not know where the scraps were taken from and he does not know anything about it.

The 1st accused person did not call witness, and closed his defence thereafter.

The legal issues to be determined by this Court are:

- 1. Whether or not the 1st accused intentionally and unlawfully caused damage to the said electrical cable the property of Ghana Ports and Harbour Authority.*
- 2. Whether or not the 1st accused person dishonestly appropriated the said electrical cable the property of Ghana Ports and Harbour Authority.*

The general principle of law in every criminal case as provided under **section 11(2) of the Evidence Act, 1975 (NRCD 323)** is that:

“In a criminal action the burden of producing evidence, when it is on the prosecution as to any fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of the fact beyond reasonable doubt.”

Section 13(1) of the Evidence Act, 1975 (NRCD 323) provides that:

“In a civil or criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt.”

The prosecution bears the burden of proof to establish the guilt of the accused person beyond reasonable doubt as per **sections 11(2) and 13(1) of the Evidence**

Act, 1975 (NRCD 323) and also as was stated in the case of *Bruce-Konuah v. The Republic [1967] GLR 611 – 617*, where Amissah J.A. stated thus:

“Barring the well-known exceptions, an accused is under no obligation to prove his innocence. The burden of proof of the accused person’s guilt is on the prosecution.”

Before examining the evidence given at the trial it is important to set out the provisions of **Act 29** under which the accused person has been charged.

Causing Unlawful Damage, under **Section 172 of Act 29**, provides as follows:

“172. Causing unlawful damage

(1) A person who intentionally and unlawfully causes damage to property

(a) to a value not exceeding one million cedis or without a pecuniary value, commits a misdemeanour,

(b) to a value exceeding one million cedis commits a second degree felony.

(2) A person who intentionally and unlawfully causes damage to property in a manner which causes, is likely to cause, danger to life commits a first degree felony.

(3) For the purposes of this section, “property” means movable or immovable property”

From the above, the elements of causing unlawful damage are as follows:

1. That a damage was caused.
2. That the damage was caused by the accused person.
3. That the damage was intentionally and unlawfully caused.

Stealing, under **124 (1) of Act 29** and **section 125 of Act 29** defines Stealing as follows:

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

Taylor J (as he then was) in the case of *Lucien v. The Republic* [1977] 1 GLR 351-359 laid out the elements in the offence of stealing per holding 2 as follows:

“The only basic ingredients requiring proof in a charge of stealing were that:

- I. the person charged must not be the owner of the thing stolen,*
- II. he must have appropriated it and*
- III. the appropriation must have been dishonest”.*

From the above, it is incumbent on the prosecution to show that the 1st accused person committed the above offences. For the prosecution to sustain the charges against the 1st accused person therefore, it must be able to prove that he intentionally caused unlawfully damage to the said electrical cable and thereafter dishonestly appropriated same.

After a careful examination of the evidence led at the trial, I made the following findings of facts and observations:

The brief facts of the case indicate that the 1st accused person was arrested on suspicion. From the evidence before this Court, none of the prosecution witnesses led evidence to the effect that they saw the 1st accused causing damage to the said electrical cables for the Court to find out whether the damage was intentionally and unlawfully caused. Therefore there is no evidence before this

Court to connect the 1st accused person to the offence of causing damage contrary to section 172 of Act 29 as in count one on the charge sheet in the instant case.

Again, no evidence was led by the prosecution witnesses during the trial to establish the elements of stealing against the 1st accused person. None of the prosecution witnesses adduced evidence that they saw the 1st accused dishonestly appropriating the said cable.

The evidence before this Court by the prosecution against the 1st accused person is basically that the 1st accused person and three others had a sack containing electrical cables to sell as scraps; and PW2 (who was A2 and convicted by the Court) weighed the cable and bought same. Therefore the 1st accused person and three others sold the electrical cable as scraps.

In his evidence before this Court, the 1st accused person told the Court that he does not know anything about this case. That he just met some people who asked him if he can show them where to sell their scraps so he led them to a place where they sold the cables. And that it was later that he got to know that the scraps were stolen from the harbor.

Under cross examination the 1st accused person told the Court that he helped the other people in selling the electrical cables because he was hungry at that time and he needed money to eat so he helped them to sell so that they will give him something but he does not know anything about it. That he does not even know the people he helped them to sell the cables.

In the 1st accused person's investigation cautioned statement given on 5th April 2022, which was tendered as Exhibit 'A' without any objection, the 1st accused person had this written:

“I am a fisherman living at Awudum. I did not steal anything from the port. About a month ago, I had information that my cousin Evans Klutse and four others went to Harbour and cut cables. On 5th April 2022, one Livingstine arrested and handed me over to GPHA security. I led police and GPHA security to a scrap yard at community one where Evans and I have been selling scraps and some of the cables stolen from the port were recovered. I did not conspire to steal from the port, it was Evans Klutse and four others who can be identified when seen were the perpetrators. Hence my statement”.

On the following day 6th April 2022, the 1st accused person gave further caution statement tendered in evidence as exhibit ‘A1’ which is similar to the earlier caution statement and it was to the effect that he knew that the cables were stolen and he helped his cousin Evans Klutse and his friends to sell same to a scrap dealer.

During the trial the 1st accused person did not object to his investigation caution statements being exhibits ‘A’ and ‘A1’; and these were taken in the presence of an independent witness.

Contrasting the 1st accused person’s defence with exhibits ‘A’ and ‘A1’, it is clear that his evidence in Court was an afterthought. This is because in exhibits ‘A’ and ‘A1’ what he said clearly contradicts what he told the Court during the trial. It is more probable than not that what the 1st accused person stated at the police station was indeed a true reflection of what took place just before he was arrested.

In the case of ***State v. Otchere [1963] 2 GLR 463***, it was held that a witness whose evidence on oath is contradictory of a previous statement made by him whether

sworn or unsworn, is not worthy of credit. Such evidence cannot, therefore, be regarded as being of any importance in the light of previous contradictory statement, unless the witness is able to give a reasonable explanation for the contradiction.

The inconsistencies in the 1st accused person's evidence and exhibits 'A' and 'A1' disclose that he is an incredible person and his evidence is not worthy of belief.

From exhibits 'A' and 'A1', the 1st accused person indeed knew very well that the said cables had been cut from GPHA which was stolen cable; and so he knew he was helping to sell stolen cable to a scrap dealer.

From the evidence adduced at the trial, the 1st accused person maintained throughout the trial that he does not know about the cables but only led the people who wanted to sell to the scrap dealers to sell. Meanwhile after a careful analysis of the evidence before the Court, the 1st accused person has been exposed as being untruthful to the Court because he knew very well that the cable was stolen and helped same to be disposed of by selling to a scrap dealer.

Based on the evidence led by the prosecution, the 1st accused person was not seen damaging and appropriating the said electrical cable from the premises of GPHA but was found with the said cable and he helped to sell same as he admitted in Court.

Clearly, there is no evidence on record proving that the 1st accused person stole the said electrical cable as per the definition of stealing under Act 29 which has been explained above.

However, *section 156 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30)* provides that:

“Where a person is charged with stealing a thing and receiving the thing knowing it to have been stolen is proved that person may be convicted of receiving although not charged with that offence”.

Section 146 of Act 29 on dishonestly receiving property provides that:

“A person who dishonestly receives property which that person knows has been obtained or appropriated by a criminal offence punishable under this Chapter, commits a criminal offence and is liable to the same punishment as if that person had committed that criminal offence.”

Section 147(1) of Act 29 also provides that:

“A person commits the criminal offence of dishonestly receiving property which that person knows to have been obtained or appropriated by a criminal offence, if that person receives, buys, or assists in the disposal of the property otherwise than with a purpose to restore it to the owner.”

From the evidence adduced at the trial, the 1st accused person knew that the said electrical cable was stolen by the people he mentioned to the police. He then assisted in the disposal of the stolen cable by helping them to sell to a scrap dealer as he told the Court in his defence; and rather did not report them to the appropriate authority. The 1st accused person indeed admitted several times in his defence to the Court that he only helped the people to sell the said electrical cables as he was hungry and needed money to eat.

In his book, CRIMINAL LAW IN GHANA, the learned judge, P.K. Twumasi @ page 311 stated that:

“To amount to appropriation, it is enough if there be evidence that the accused caused others to take the thing and there was intent on the part of the accused person to deprive the owner of the benefit of his ownership or of the benefit of his right or interest in the thing”.

In the instant case, there is no evidence that the 1st accused person was actually seen damaging and stealing the electrical cable. The evidence led at the trial only proves that the 1st accused person was seen with the stolen cable which had been damaged, and he was the one who sold same to the 2nd accused person who identified him and testified against him in open Court as PW2.

In the case of *Commissioner of Police v. Isaac Antwi [1961] GLR 408-412*, it was held that the accused person is not required to prove anything. All that is required of him is to raise a reasonable doubt as to his guilt.

This is further emphasized by *sections 11(3) and 13(2) of the Evidence Act, 1975 (NRCD 323)*. *Section 11(3)* provides that:

“In a criminal action, the burden of producing evidence, when it is on the accused as to a fact the converse of which is essential to guilt, requires the accused to produce sufficient evidence so that on the totality of the evidence a reasonable mind could have a reasonable doubt as to guilt.”

Section 13(2) provides that:

“Except as provided in section 15 (c), in a criminal action, the burden of persuasion, when it is on the accused as to a fact the converse of which is essential to guilt, requires only that the accused raise a reasonable doubt as to guilt.”

The defence of the 1st accused person was found to be an afterthought and not worthy of believe therefore it could not raise any reasonable doubt as to his guilt. It is evident that the 1st accused person was not being truthful to the Court and therefore his defence is unreliable.

In the case of *Osaе v. The Republic [1980] GLR 446-455 @ 455*, Taylor J. (as he then was) held that:

“...for the prosecution to succeed in a charge there must be no reasonable doubt that the particular charge has been proved.”

Also, Crabbe J.SC (as he then was) in the case of *The State v. Sowah and Essel [1961] GLR 743-747, S.C.* held that

“A judge must be satisfied of the guilt of the crimes alleged against an accused person only on consideration of the whole evidence adduced in the case; and only then can he convict”.

I am not satisfied of the guilt of the 1st accused person as to the charge of causing damage as the prosecution could not prove that charge against him per the ingredients of the offence. For the foregoing reasons, I find that it would be erroneous for this Court to convict the 1st accused person on count one. In the circumstances, the 1st accused person herein, is hereby acquitted and discharged

on count one.

However, under the Criminal Procedure Act as I have elaborated above, an accused person can be convicted of dishonestly receiving on a charge of stealing. I therefore find the 1st accused person herein guilty of the offence of dishonestly receiving on count two; and he is convicted accordingly.

Court: Any plea in mitigation before sentence is passed?

A1: I am pleading with the Court to reduce my sentence for me.

Court: Is the 1st accused person known?

Prosecutor: No, he is a first time offender.

By Court:

Having considered the plea in mitigation of the 1st accused person and considering that he is a first time offender, the Court hereby sentences him to a prison term of twelve (12) months IHL. The 1st accused person shall also pay a fine of 100 penalty units. In default of the fine, he shall serve a prison term of six (6) months IHL.

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H/H AKOSUA A. ADJEPONG (MRS)
CIRCUIT COURT JUDGE
15TH DECEMBER 2022

