

**CC7/30/23**

**REPUBLIC**

**V**

**SADICK GARIBA**

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**JUDGMENT**

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**INTRODUCTION:**

In this case the accused person; a resident of Oduman in the Ga-West District of the Greater-Accra Region of the Republic of Ghana aged twenty-five years and a tiler by profession was charged with the following:

- i. Count 1: Unlawful Entry; contrary to Section 152(1) of the Criminal Offences Act of 1960, (Act 29).
- ii. Count 2: Stealing contrary to Section 124(1) of the Criminal Offences Act of 1960, (Act 29).

He was arraigned before the court on 20<sup>th</sup> March, 2023 and pleaded as follows to the charges against him after same had been read in English and translated to him in Hausa language which was his language of preference:

- i. Count 1: NOT GUILTY
- ii. Count 2: GUILTY

**FACTS OF THE CASE:**

According to Prosecution, the complainant Kingsley Onuri aged forty-six (46) years old is a resident of Oduman in the Ga-West Municipal District of the Greater-Accra Region of the Republic of Ghana. He operates a drinking spot. The accused person is a tiler aged twenty-five years old also resident at Oduman.

On 4<sup>th</sup> February, 2023 the accused person visited the complainants drinking shop for refreshment purposes and left the place as soon as he sighted the complainant. On that same day: 4<sup>th</sup> February, 2023 at about 7:00pm, the complainant entered his drinking spot and detected that one of his jackpot machines was stolen. He claimed that he received a tip-off that the accused person was the culprit.

On 5<sup>th</sup> February, 2023 the complainant organised a team of people to search and arrest the accused person. He was found in his hideout, arrested and brought to Nsakina Police Station. Following interrogations, the accused person confessed to the police that indeed he stole the complainant's jackpot machine. He further narrated that following the burglary, he hid the jackpot machine in a bush at Oduman, broke the padlock seal to the machine, stole cash in same worth Three Hundred and Ninety Cedis (GHC 390.00) only and abandoned same in the bush. The accused person led police to the bush was could not retrieve the jackpot machine. He was subsequently charged and hauled before the court.

#### **EVIDENCE ADDUCED BY PROSECUTION:**

Having pleaded not guilty to the charge of unlawful entry, it is settled in law that the prosecution is under a duty to prove that accused person committed the offence of unlawful entry for which he is standing trial. In support of its case, the prosecution called three witnesses including the investigator whose testimonies are provided as follows: below: Kingsley Onuri (PW1); the complainant stated that he always suspected that the accused was a criminal. He testified that he owned the drinking spot and that on the 4<sup>th</sup> of February, 2023 he did see the accused person at about 2am only to discover the theft of his jackpot machine and cash worth Nine Hundred Cedis (GHC 900.00) only at 7pm. He stated that he arrested the accused person personally and was arranging logistics to transport him to the police station only for Accused to absconded only to be subsequently arrested by neighbours and handed over to the police. During trial, he vehemently maintained that indeed the accused person visited his facility at 2pm that day and that he saw the accused person.

Testifying in support of PW1's statement Baba Issaka (PW2), stated that he was a labourer at Oduman and knew the accused person as a previous burglar of a motorbike who was wanted

within his vicinity and his recent information received of stealing PW1 jackpot machine and cash. During trial Accused waived cross-examination of this witness.

The third prosecution witness: No. 52331 L/Cpl Eric A Mumuni (PW3) who is also the investigator in charge of this case testified that upon the case being referred to him for investigation he took statements from PW1 and PW2 after which he visited the scene of the crime with the complainant. The investigation led to the arrest of the accused person. He further testified that during interrogations, the accused person confessed to the police of having stolen the China jackpot machine of PW1, breaking the padlock seals on it, stealing coins worth Three Hundred and Ninety Cedis (GHC 390.00) only from same and subsequently dumping the device/machine in a nearby bush at Oduman. He stated that the police proceeded to the nearby bush but could not retrieve the jackpot machine. Pw3 tendered without objection from the accused person disclosures in support of his evidence which included Exhibits "D" and "E" being the investigation caution statement and charged statement of accused together with a coloured photo exhibit "C" of the nearby bush in which the accused person dumped the jackpot machine. During trial Accused waived cross-examination of this witness. The prosecution thereafter announced the closure of their case.

The court thereafter found that prosecution had established a prima-facie case of unlawful entry against the accused person for which he must be called upon to open his defence.

#### **DEFENCE OF ACCUSED:**

In his investigation caution statement, the accused person admitted the offences as above mentioned charged. He stated that indeed on 4<sup>th</sup> February, 2022 he unlawfully entered the complainant's drinking spot at 3:00am, stole the China jackpot game box, hiding same in a bush, breaking the seal on same, stealing coins worth Five Hundred and Ninety Cedis (GHC 590.00) only and abandoning same in the bush. He added that he returned at a later date to retrieve the jackpot machine but same was nowhere to be found.

Faced by the evidence produced by the prosecution, the accused person mounted his defence as follows; in his evidence in chief, the accused stated that he did visit the facility on the date of the incident where he was informed by an employee of the complainant that he was being sought for

by the complainant and that he must flee. Thus, he sought refuge with his brother at Ablekuma until an anonymous phone call invited him to visit Oduman where he was arrested on arrival by four boys who duly informed the complainant of his arrest. During cross-examination he maintained that the bush was opposite his home. He raised no doubt whatsoever in the testimony of the prosecution as to the first charge of unlawful entry raised against him.

### **ISSUES FOR DETERMINATION:**

At the end of the trial, the legal issues to be determined were as follows:

- i. Whether or not the accused person unlawfully entered the complainant's drinking spot.
- ii. Whether or not the accused person is guilty of the charge against him.

### **BURDEN OF PROOF:**

In all criminal prosecutions the prosecution has the duty of proving the guilt of the accused person. This requirement can be found under **Sections 10(2) and 11(2) of the Evidence Act, 1975 (NRCD 323)**:

#### *11. Burden of producing evidence defined*

- (1) *For the purposes of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party.*
- (2) *In a criminal action, the burden of producing evidence, when it is on the prosecution as to a fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on the totality of the evidence a reasonable mind could find the existence of the fact beyond a reasonable doubt.*

Moreso, it is provided in **Section 11(3) of the Evidence Act, 1975 (NRCD 323)** that:

- (3) *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.*

It is further stipulated in Sections 13, 14 and 15(a) of the Evidence Act, 1975 (NRCD 323) that:

*13. Proof of crime*

- (1) *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.*
- (2) *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.*

*14. Allocation of burden of persuasion*

*Except as otherwise provided by law, unless it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence that party is asserting.*

*15. Burden of persuasion in particular cases*

*Unless it is shifted,*

- (a) *the party claiming that a person has committed a crime or wrongdoing has the burden of persuasion on that issue;*

The above statutory positions set the basis for the examination of the above stated issues in order to determine whether or not prosecution has met the standard as required by law in establishing the culpability of the accused person.

In the case of **Mallam Ali Yusuf Issah v The Republic [2003] SCGLR 174** Akuffo JSC held that:

*“Taken together, the burden of producing evidence and the burden of persuasion are the components of ‘the burden of proof.’ Thus, although an accused person is not required to prove his innocence, during the course of his trial, he may run a risk of non-production of evidence and/or non-persuasion to the required degree of belief, particularly when he is called upon to mount a defence.”*

## ANALYSIS:

In addressing the first count against Accused ie. Unlawful Entry, **Section 152 of the Criminal Offences Act, 1960 (Act 29)** provides that:

*“A person who unlawfully enters a building with the intention of committing a criminal offence commits a second-degree felony.”*

For this offence, the prosecution must prove the following elements of the offence:

- i. that there was an entry
- ii. that it was unlawful
- iii. that the entry was into a building (to constitute a building, for the purposes of the offence of unlawful entry the building must have been constructed or be in the process of being constructed or made for the purpose of being used for human occupation or other purpose) and finally
- iv. that the accused had the intention of committing a criminal offence at the time of entry.

It is provided in **Section 153 of the Criminal Offences Act, 1960 (Act 29)** that an entry is unlawful if a person enters otherwise than in exercise of a lawful right, or by consent of any other person able to give consent for the purposes for which that person enters.

The evidence tendered by the prosecution consisting of the investigation caution statements of the accused person or exhibits “C” and “D” which accused person did not object to either during case management conference or at the time of tendering in court even though the said processes were thoroughly read and explained to him in the language that he understood, clearly indicates that the accused person entered the drinking spot of PW1 at 3:00am. On 4<sup>th</sup> February, 2023. Further accused person did not have the consent or authority of PW1 to enter his drinking spot at that hour of the day. In doing this he stole the complainant’s jackpot machine and monies deposited in same as any person without criminal intent would have done. Moreover, the fact that accused person entered PW1’s drinking spot in his absence and without his consent and the fact that he entered for the purpose of carrying away the China Jackpot machine of the complainant is evidence of the fact that he had the intention of committing a criminal offence at the time of entry.

The defence of the accused person on the charge is entirely lacking in merit. It is not the case of the accused person that he was invited by PW1 to enter his drinking spot at that hour of the day. Neither is it his testimony that he went to the drinking bar at that hour to procure their services nor to maintain law and order at that location. Nor is he saying that he has unhindered access to the drinking bar at the behest of the complainant. Also, if indeed, he had committed no wrong, he had no reason to seek refuge at Ablekuma with his brother; clearly, he was running away from the complainant and no other person based on the tip-off he received. Accused admitted stealing the China Jackpot machine belonging to Complainant by pleading guilty simpliciter at the commencement of this case. He did not state that the device was gifted, sold, mortgaged or that it was a set off from PW1 to him. This device was on the premises of PW1. The accused person could not have gained access to the device if he had not unlawfully entered PW1 premises. In the case of **Billa Moshie v The Republic (1977) 2 G.L.R 418 – 429** Anin JA. in Holding 2 stated that a confession alone, without more was sufficient to found a criminal conviction In his wise words:

*“A conviction could quite properly be based entirely on the evidence of a confession by a prisoner, and such evidence was sufficient as long as the trial judge inquired most carefully into the circumstances in which the alleged confession was made and was satisfied of its genuineness.*

During trial his testimony was all over the place instead of focusing on the charge before the Court neither did he succeed in raising any doubt in the mind of the court as to his guilt. Rather, it was manifestly evident that the accused person was throwing dust in the eyes of the court. For this reason, the defence of the accused person is not reasonable and does not raise any doubt at all in the prosecution’s case. This fact was further confirmed by accused himself in his own caution statement to the police tendered before this court without any objection at all from the accused person. In his entire defence before the court accused person could not provide any valid detail on the employee of PW1 who gave him the tip-off nor the boys who arrested him without any cause and connected him to the crimes in question.

Although the accused person in his defence before this court insisted that his investigation caution statement and charge statement to the police was taken under duress, an examination of the said documents indicated that the prosecution fully complied with the provisions of Section 120 of the

Evidence Act, 1975, (NRCD 323) while taking the statements of the accused person. Furthermore, the said investigation caution statement and charged statement of the accused person during case management and trial were again read and explained to the accused person in Hausa; the language he understood. For this reason, the defence of the accused person that he did not volunteer freely those statements is an afterthought and cannot avail him.

#### **FINDINGS:**

In view of the above, the court finds the accused person guilty of the offence of Unlawfully Entry; contrary to Section 152 of the Criminal Offences Act, 1960 (Act 29) and holds so accordingly.

In the case of COP v Antwi [1961] GLR 608 SC per Korsah CJ. the Supreme Court held among others that the fundamental principle 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 the circumstances peculiarly within the knowledge of the accused is called for. From the facts and evidence presented by the prosecution, it is clear that they discharged their burden and that accused did enter PW1 property unlawfully. During the trial, Accused gave evidence which same did not raise any doubt as to his guilt. In the absence of any contradictory evidence, the prosecution's case stands unchallenged. The court consequently convicts the accused person of same.

#### **SENTENCE:**

In conclusion, having taking due cognizance of the circumstances of the accused person, the period he has spent in lawful custody, his demeanour during trial as well as his plea of mitigation, the court proceeds to sentence him as follows:

- i. Count One: Accused is sentenced to a fine of one hundred (100) penalty units or in default will serve a term of thirty (30) days imprisonment.
- ii. Count Two: Accused is sentenced to a fine of one hundred and fifty (150) penalty units or in default will serve a term of four (4) months imprisonment.

Sentences are to run consecutively.



The complainant is to come by civil action to recover from the accused person an amount of Nine Hundred Cedis (GHC 900.00) only being the cost of the China jackpot machine stolen by the accused person.

**H/W ANNETTE SOPHIA ESSEL (MRS.)**

**MAGISTRATE**