

**CORAM: BEFORE HER WORSHIP ANNETTE SOPHIA ESSEL (MRS.) SITTING AS
MAGISTRATE AT THE DISTRICT COURT 'B' AMASAMAN ON 28th NOVEMBER, 2023**

COURT CASE NO: 7/56/23

THE REPUBLIC

VERSUS

- 1. STEPHEN ABBEY**
- 2. JONATHAN ADDY**

JUDGMENT

INTRODUCTION:

The 1st accused person: Stephen Abbey (A1) was charged with the following offences:

- Count 1: Causing Unlawful Damage; contrary to Section 172 (1) (b) of the Criminal Offences Act, 1960 (Act 29).
- Count 2: Unlawful Entry: contrary to Section 152 of the Criminal Offences Act, 1960 (Act 29).
- Count 3: Stealing; contrary to Section 124(1) of the Criminal Offences Act, 1960 (Act 29).

A1 pleaded not guilty to all the charges above-mentioned.

The 2nd Accused person: Jonathan Addy (A2) was charged with one count of

- Count 4: Dishonestly Receiving; contrary to Section 147(1) of the Criminal Offences Act, 1960 (Act 29)

A2 pleaded guilty simpliciter to this charge and was accordingly summarily sentenced.

FACTS OF THE CASE AS PRESENTED BY PROSECUTION:

Prosecution stated that the complainant Yeboah Ansong was a plumber resident at Accra whilst the accused persons were mason's resident at Ayikai Doblo a suburb in the Ga-West District of the Greater-Accra Region of Ghana. On 10th March, 2023 following a visit to his building at Ayikai

Doblo, the complainant observed that he had been burgled. He further observed that the thief entered the premises by causing damage to a burglar proof window and entering through same to make away with seventy-five (75) boxes of tiles, two (2) wheel barrows, one hundred (100) pieces of cement blocks, three (3) facia boards, two (2) shovels and one (1) head pan.

The complainant caused an announcement to be done by the assemblyman of the area for the return of the said items which same led to A2 returning to fifty-six (56) pieces of tiles for identification by the complainant and also verification as to whether they were his property. Complainant upon identifying same reported the burglary to the Amasaman Police Station. A2 claimed that the tiles were sold to him by A1. A1 was subsequently arrested, he admitted having sold the tiles to A2 but denied knowledge of the other items above-mentioned. After investigations, both accused persons were charged with the offences above-written and put before the court.

ISSUES FOR DETERMINATION:

From the above facts the following are the issues which the court has to determine:

1. Whether or not accused unlawfully caused damage to complainant's burglar proof?
2. Whether or not accused unlawfully entered the premises of Yeboah Ansong; the complainant
3. Whether or not accused stole the items above-mentioned belonging to the complainant.

BURDEN OF PROOF:

Legally, as is required by Sections 10(2) and 11(2) of the Evidence Act of 1975 (Act 323), the prosecution is under a duty to prove that A1 committed the offences for which he is standing trial.

Section 11(2) of the Evidence Act, 1975 (NRCD 323) states that;

11(2) "In a criminal action the burden on the prosecution of facts essential to guilt requires the prosecution to produce sufficient evidence so that the court can find the guilt of the accused proved beyond reasonable doubt."

However, in proving the guilt of the accused, prosecution must meet the required standard of proof in all criminal proceedings which according to Sections 13 (1), 11(2) (3), 22 of the Evidence Act, 1975

(NRCD 323) is proof beyond reasonable doubt. Section 13(1) of the Evidence Act, 1975 (NRCD 323) states as follows:

‘in any 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’.

And there seems to be a further emphasis under Section 22 of the Evidence Act 1975 (NRCD 323) which states that:

“in a criminal action, a presumption operates against the accused as to a fact which is essential to guilt only if the existence of the basic facts that give rise to the presumption are found or otherwise established beyond reasonable doubt...”

According to Section 11(3) of the Evidence Act, 1975 (NRCD 323) A1 is not under any duty to prove his innocence, he is only required to raise a reasonable doubt in his defence. This section provides that:

11. (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’*

The above-mentioned 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.

EVIDENCE ADDUCED BY PROSECUTION:

Prosecution in making its’ case against the accused person called the complainant; PW1 who testified that he had an uncompleted house at Ayikai Doblo. He stated that he had fixed doors and a burglar proof at this property five months age and had subsequently deposited 106 different boxes of wall and floor tiles into same. He claimed he also had two wheel-barrows, three fascia boards, one hundred pieces of cement blocks at this site. On 15th February, 2023 on a visit to his site he observed that A1 had entered his property, caused damage to his burglar proof, and stole eighty

(80) pieces of floor tiles, two wheel -barrows, three fascia boards and one hundred pieces of cement blocks.

The complainant stated that he informed the assemblyman, who made an announcement of the burglary and encouraged the culprits to return the items. Following the announcements, A2's wife gave a tipoff that A1 had sold some building materials to A1 and showed samples of same for identification which proved to be that of the complaint. On 1st March, 2019 the complainant lodged a complaint with the police which led to the prosecution of the accused persons above-mentioned. During trial, PW1 was cross-examined by accused and he maintained that accused person unlawfully entered his property, damaged his burglar proof and stole the items mentioned above.

In the testimony of D/PW/Sgt Benedicta Frimpong; the Investigator (PW 2), she stated that she got to know the complainant in the course of investigating this case. On 1st March, 2023 at about 3:40pm following the complainant's report, A1 and A2 were arrested following investigations, the scene was visited and she obtained the disclosures from the complainant and accused persons which same she tendered during trial without objection. A1 waived cross-examination of PW2 during trial.

DEFENCE OF THE FIRST ACCUSED PERSON (A1):

The relevant portions of the first accused person's (A1) investigation caution statement Exhibit 'B' and charge statement Exhibit 'C' are reproduced as follows: "I am a mason and reside at Ayikai Doblo. Can remember the exact date but to do my mason work upon my returning saw a window broken which I entered and saw boxes of tiles which I took (6) six and fled. And gave to my master brother Joe at Ayikai Doblo. Was called by my master's brother Mr. Ayikwei that there was a mason job at Dome so went there and was arrested to Amasaman Polce Station yesterday 8th march, 2023."

Now in exhibit "C" A1 stated verbatim that: "I am a mason and reside at Ayikai Doblo. Cannot remember the exact date but went to do my mason work upon my return I saw a window broken which I entered and saw tiles which I took (6) six boxes which numbered fifty-six pieces and fled. I gave to my master brother Joe at Ayikai Doblo. Was called yesterday 8th March, 2023 by my master's brother Mr. Ayikwei that there was a mason job at Dome so went there only for the to be arrested to Amasaman Polce Station."

Upon a finding of a prima facie case against A1 at the close of prosecution's case, he opened his defence in which he stated that indeed he entered the premises of the complainant and stole some of the tiles of the complainant, however he did not damage the burglar proof of the complainant as he entered through a door open ajar at the complainants site.

ANALYSIS:

From the facts and evidence presented, the court finds that accused person acted alone without the involvement of anyone. Again, it was established that there was sufficient evidence linking A2 to be his accomplice to the crimes in question. Furthermore, it was accused person who admitted unlawfully entering the premises of PW 1. The court further finds that accused entered the premises by causing damage to the complainant's burglar proof in order to gain access into his building and subsequently stealing the items above-mentioned.

Section 14(c) of the 1992 Constitution of the Republic of Ghana presumes innocence in favour of an accused person until the prosecution has proven his guilt. It provides as follows:

14. *Every person shall be entitled to his personal liberty and no person shall be deprived of his personal liberty except in the following cases and in accordance with procedure permitted by law—*
- (a) *in execution of a sentence or order of a court in respect of a criminal offence of which he has been convicted; or*
 - (b) *in execution of an order of a court punishing him for contempt of court; or*
 - (c) *for the purpose of bringing him before a court in execution of an order of a court; or*

Having said so I shall proceed to address the first count which is the offence of Causing Unlawful Damage; contrary to Section 172(1)(b) of The Criminal Offences Act, 1960 (Act 29). According to

Section 172 of The Criminal Offences Act, 1960 (Act 29)

"Section 172—Causing Unlawful Damage.

- (1.) *Whoever intentionally and unlawfully causes damage to any property by any means whatsoever—*
- (a) *to a value not exceeding ₵1 million, or to no pecuniary value, shall be guilty of a misdemeanour;*

- (b) to a value exceeding ₦1 million, shall be guilty of second-degree felony.
- (2) Whoever intentionally and unlawfully causes damage to any property in such a manner as to cause or to be likely to cause danger to life shall be guilty of first-degree felony.
- (3) In this section property means movable and immovable property of every description.

Section 173—Definition of Damage.

"Damage" includes not only damage to the matter of a thing, but also any interruption of the use thereof, or any interference therewith, by which the thing becomes permanently or temporarily useless, or by which expense is rendered necessary in order to render the thing fit for the purposes for which it was used or maintained.

Further, **Section 174(1) of the Criminal Offences Act, 1960 (Act 29)**, provides the circumstances under which damage can be said to have been caused unlawfully. It provides as follows:

"Section 174—Explanation of Unlawful Damage.

- (1) *A person does an act or causes an event unlawfully, within the meaning of the provisions of this Code relating to unlawful damage, in any case in which he is liable to any civil action or proceeding, or to a fine or other punishment under any enactment, in respect of his doing such act causing such event, or in respect of the consequences of the act or event, or in which he would be so liable if he caused the event directly by his own act, or in which he is liable to be restrained by injunction or any other proceeding from doing such act or causing such event.*
- (2) *It is immaterial whether a person accused of a crime in respect of any premises or thing be or be not in possession or occupation thereof.*
- (3) *A person who is interested jointly or in common with other persons in any premises or thing as an owner or otherwise, or who is owner thereof in trust for any other person, can be guilty of any crime punishable under the aforesaid provisions by an act which is unlawful as herein before mentioned.*
- (4) *A person who is sole owner for his own benefit of any premises or thing can be guilty of any crime punishable under the aforesaid provisions by an act done with intent to injure or defraud any person or to cause harm to any person although such act be not otherwise unlawful.*

- (5) *Notwithstanding anything contained in Part I as to mistake of law, a person shall not be liable to punishment in respect of his doing anything which, in good faith, he believes that he is entitled to do.*

In this instance prosecution must prove that the damage caused to the complainant was first intentional and unlawful. It is not enough to prove the accused intentionally damaged the burglar proof window of the complainant but prosecution must prove further that accused person had no legal justification in causing the intentional damage. [See Criminal Law in Ghana by P.K Twumasi page 397], **Section 11 of the Criminal Offences Act, 1960 (Act 29)** provides that:

Section 11 – Provisions Relating to Intent.

- (1) *If a person does an act for the purpose of thereby causing or contributing to cause an event, he intends to cause that event, within the meaning of this Code, although either in fact or in his belief, or both in fact and also in his belief, the act is unlikely to cause or to contribute to cause the event.*
- (2) *If a person does an act voluntarily, believing that it will probably cause or contribute to cause an event, he intends to cause that event, within the meaning of this Code, although he does not do the act for the purpose of causing or of contributing to cause the event.*
- (3) *If a person does an act of such a kind or in such a manner as that, if he used reasonable caution and observation, it would appear to him that the act would probably cause or contribute to cause an event, or that there would be great risk of the act causing or contributing to cause an event, he shall be presumed to have intended to cause that event until it is shown that he believed that the act would probably not cause or contribute to cause the event, or that he did not intend to cause or contribute to it.*
- (4) *If a person, intending to cause an event with respect to one or some of several persons or things, or to such indeterminate person or thing as may happen to be affected by his act, causes such event with respect to any such person or thing, he shall be liable in the same manner as if he had intended to cause the event with respect to that person or thing.*

From the facts, the first accused person A1) did not suddenly find himself on PW1 property, but rather he intentionally took steps to get unto the site and he further intentionally caused damage to complainant's burglar proof window because he destroyed the burglar proof window in order

to gain access into complainant's building to steal the building materials above stated. Again, the action of A1 is unlawful because damaging the complainant's burglar proof window is an act that could attract a fine or other punishment under the Criminal and Other Offences Act of Ghana Act 29. In exhibits "B" and "E" or the investigation caution statement and the charged statement of A1 tendered by prosecution without any objection at the time of tendering, A1 stated that he did enter the property through the burglar proof window. In his defence he vehemently maintained that the window was already damaged thus facilitating his entry yet he led no evidence on how that damage occurred without his intervention or who caused same. For this reason, the Court finds that A1: Stephen Abbey is guilty of the offence of causing unlawful damage to the complainant or PW1's burglar proof window and accordingly holds so. Below is a snippet of what happened during cross-examination of A1 by the prosecution:

Q. *Do you agree with me that you unlawfully entered PW1 building with intent to commit crime?*

A. *I did not enter PW1 uncompleted house with the intent to commit a crime. The door to the premises was already opened when I got there.*

Q. *So, did you enter PW1 building?*

A. *Yes, please I did*

Q. *So what was the reason why you entered PW1 building?*

A. *I have no reason for entering the uncompleted premises of complainant.*

In addressing the second count of A1, **Section 152 of the Criminal Offences Act, 1960 (Act 29)** provides that:

"Section 152- Unlawful entry

A person who unlawfully enters a building with the intention of committing a criminal offence commits a second-degree felony"

For this crime the prosecution must prove that the following events occurred:

- i. that there was an entry,
- ii. that the said entry was unlawful,
- iii. that the said 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.

According to Section 153 of the Criminal Offences Act, 1960 (Act 29), 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 statement and charged statement of A1 or exhibits "B" and "E" which A1 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 A1 entered the room of PW1 while PW1 was not in the building. Further A1 did not have the consent or authority of PW1 to enter his building because he broke his burglar proof window in order to gain access into PW1's building instead of using the door as any person without criminal intent would have done. It is neither the defence of A1 that the premises of PW 1 is a public place which same can be entered regularly by the mode he used without the express permission of PW 1. Moreover, the fact that A1 entered PW1's building in his absence and without PW 1's consent and the fact that he broke PW1's burglar proof window in order to enter his room, and finally the fact that accused entered for the purpose of carrying away the building materials of PW1 is sufficient and cogent evidence of the fact that he had the intention of committing a criminal offence at the time of entry. For these reasons, the court finds A1 guilty of the offence of unlawful entry and holds so accordingly.

With respect to the third and final issue for resolution; whether or not A1 stole the building materials belonging to PW1, **Section 124 (1) of the Criminal Offences Act, 1960 (Act 29)** provides that:

"Section 124 – Stealing

(1) Whoever steals commits a second-degree felony."

What actually amounts to stealing is spelt out under **Section 125 of the Criminal Offences Act, 1960 (Act 29)** where it is stated that:

“Section 125 Definition of stealing

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

In the case of **Ampah v The Republic [1976] 1 GLR 403** Abban J. stated the three ingredients of the offence which prosecution must prove as follows:

“Section 124 (1) of the Criminal Code, 1960 (Act 29), states, “Whoever steals shall be guilty of a second-degree felony.” 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.” So that the basic ingredients which ought to be proved in a charge of stealing by the prosecution are, firstly, that the accused was not the owner of the subject-matter of the charge; secondly, that he appropriated the subject-matter of the charge and, thirdly, that the appropriation was dishonest. If these three essential elements are proved to the satisfaction of the court, the court will be bound to convict unless the accused is able to put forward some defence or explanation which “can cast a reasonable doubt” on the case for the prosecution...”

Under **Section 120 (1) (b) of the Criminal Offences Act, 1960 (Act 29)**, an appropriation of a thing is dishonest if it made by a person without a claim of right, and with a knowledge or the belief that the appropriation is without the consent of a person for whom that person is trustee or owner of the thing, or that the appropriation would if known to the other person, be without the consent of the other person. Again **Section 122 (2) of the Criminal Offences Act, 1960 (Act 29)** provides that an appropriation of a thing in any other case means the moving, taking, obtaining, carrying away, or dealing with a thing with an 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.

Under a charge of stealing the prosecution has the burden of proving the following ingredients:

- a. dishonesty
- b. appropriation and
- c. property belonging to another person.

From the facts PW1 testified that he observed following a visit to his building that the above-mentioned building materials had been stolen, while PW2 testified that following investigations,

A1 in his own investigation caution and charged statements to police admitted having gone to PW1's house to steal tiles and fleeing. A1 in his defence at trial denied stealing all the above-listed items. In the case of COP v Isaac Antwi [1961] GLR 608 per Korsah CJ., the apex 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. Below is a snippet of what transpired in court during cross-examination of A1 by prosecution:

Q: *Do you agree with me that you dishonestly appropriated boxes of tiles and sold same to one Jonathan Addy and same was retrieved for evidence purposes?*

A: *That is not so.*

Q: *Have a look at exhibit D1. These tiles were with you from Jonathan Addy and he mentioned your name as the one who sold them to him.*

A: *That is so.*

Q: *You pleaded not guilty to stealing the complainant items. So how did you come by those tiles?*

A: *Upon my return from site, I saw the burglar proof window into complainant premises was opened so I entered and took the tiles.*

Q: *In number four (4) your written statement you stated that you gave the said tiles your master, so how did you transport it to your master?*

A: *My Lady I was in need so I picked the tiles and passed it through the window.*

Q: *Did you inform the complainant?*

A: *No, my Lady*

Q. *So, who assisted you in transporting the tiles to your master?*

A. *It was I alone.*

From the facts and evidence presented by the prosecution it is clear that, PW1 and not the first accused person (A1) is the owner of the building materials in question and A1 with full knowledge of the fact that he is not the owner of these items went into PW1's building and carried same away. This fact was further confirmed by A1 himself in his own caution statement to the police tendered before this court without any objection at all from A1.

During trial he did not mention to Prosecution any other person who took the other items, neither did he raise any doubt in the mind of the court that he did not steal all those items mentioned by prosecution. Moreover, it was A2 who stated that he procured the items from A1 and he did not deny this assertion of A2. The defence of the accused person on the issue is entirely lacking in merit and more or less amounts to an admission. For this reason, the court finds that A1 dishonestly appropriated the building materials in question and accordingly finds A1. Guilty as charged.

FINDINGS & SENTENCE:

In conclusion, this court finds A1: Stephen Abbey guilty of the offences herein and having taking due cognizance of his circumstances, the period he has spent in lawful custody, as well as his plea of mitigation, sentences him as follows:

Count One: A1 is sentenced to a fine of one hundred (100) penalty units or in default will serve a term of three months' imprisonment.

Count Two: A1 is sentenced to a fine of one hundred and fifty (150) penalty units or in default will serve a term of four months imprisonment.

Count Three: A1 is sentenced to a term of three hundred and sixty-five (365) days imprisonment in productive hard labour.

Sentences are to run concurrently.

H/W ANNETTE SOPHIA ESSEL (MRS.)

MAGISTRATE