

**IN THE SUPERIOR COURTS OF JUDICATURE IN THE HIGH COURT OF  
JUSTICE HELD IN KUMASI ON MONDAY, THE 20<sup>TH</sup> DAY OF SEPTEMBER,  
2023 BEFORE HER LORDSHIP ROSEMARY BAAH TOSU**

**CASE NO: D16/74/2023**

**FAUSTINA ATTA                    ---                    APPELLANT**

**VS**

**THE REPUBLIC                    ---                    RESPONDENT**

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**JUDGMENT:**

This appeal emanates from a judgment of the Juaso Circuit Court., Ashanti in the case numbered B1/01/2024 titled The Republic vs Sarpong Bernard & 3 Ors. The Appellant was the fourth Accused person and this appeal is in respect of her only.

The Appellant herein was convicted by the trial Circuit Court on the charge of Dishonestly Receiving contrary to section 146 of the Criminal Offences Act 1960, Act 29. The Appellant, unrepresented by Counsel was convicted on her own plea of guilty. The Appellant upon conviction was sentenced to Twelve Months imprisonment in hard labour.

The ground of Appeal as seen from the Petition of Appeal is that the sentence imposed on Appellant is harsh and excessive considering the circumstances of the case. The sole relief that the Appellant prays for is for her sentence to be reduced and or substituted with a fine.

Counsel for Appellant, moved the court viva voce on the 4<sup>th</sup> day of September.2023. He submitted that the Appellant was convicted by the Circuit Court, Juaso on a charge of dishonestly receiving one jerry can of palm oil on the 4<sup>th</sup> of July, 2023 and sentenced to twelve months in prison custody in hard labour. Counsel for the Appellant submits that in the circumstances of the case, this sentence was harsh and excessive.

He says that the Appellant is a vendor of the popular meal of beans and gari. That palm oil is an essential in this meal and it would have been difficult for the Appellant to know that in the circumstance she bought it that it was stolen goods.

Counsel further says that the prosecution indicated that a jerry can of palm oil costs GH\$800 so he believes the learned trial judge was influenced by this fact. Counsel says upon his investigation, even recently a jerry can of palm oil does not cost that much.

He prays the Court to exercise its discretion to reduce the sentence to a month.

The prosecution contends that even though Counsel for the Appellant's prayer before this Court has been emotive, the law must take its course. She however prays the Court to do justice in the matter.

It is well settled that an appeal be it civil or criminal is by way of rehearing, which means that the appellate Court assumes the jurisdiction of the trial Court. In such a situation, the Appellate Court must examine the record including the facts, testimonies of witnesses, the judgment and any other orders made by the trial Court.

See the case of **DEXTER JOHNSON VS THE REPUBLIC (2011) 2 SCGLR 601** and **ARTICLE 140(5) OF THE 1992 CONSTITUTION.**

**Section 30 of the Court's Act, 1993 Act 459** as amended provides the orders available to an appellate Court in a criminal case and these include affirming the conviction and sentence of the trial court, setting aside the conviction and sentence of the trial court

thereby acquitting and discharging the appellant, an increase or reduction in the sentence or an order for retrial.

In line with the above authorities, I have examined the record of appeal and considered the circumstances of the matter. Looking at the record the Appellant was unrepresented and there is nothing on the face of the facts which show that the Appellant knew that the jerry can of palm oil was stolen.

Even though the learned judge considered mitigating factors such as the Appellant being a first-time offender, I think there are more mitigating factors which should have enured to the benefit of the Appellant. Such as being a mother and a productive member of society, who sells cooked food. Further considering the value of the item dishonestly received, I find the sentence to be too harsh and excessive.

Dotse JSC has lost no opportunity to advocate for the courts to consider mitigating factors such as extreme youth and a clean record of an Accused when handing out sentences. See the case of **FRIMPONG ALIAS IBOMAN VS THE REPUBLIC (2012) 1 SCGLR, 297**.

In the case of **ROBERTSON VS THE REPUBLIC (J3/4/2014)** dated 28<sup>th</sup> May, 2014, Dotse JSC in his dissenting opinion on sentence noted the urgent need for reform on the kinds of punishment regime in our criminal jurisprudence. See Section 294 of Act 29.

He advocates for reforms to include punishments such as community service, parole, suspended sentences etc.

In view of the above and by the powers conferred on this court by **Section 30 of the Courts Act, 1993, Act 459**, I hereby set aside the sentence of twelve (12) months imprisonment in hard labour and substitute it with a sentence of one (1) month in prison custody to take effect from the date of conviction.

The appeal against the sentence, hereby succeeds.

[SGD.]

H/L JUSTICE ROSEMARY BAAH TOSU

JUSTICE OF THE HIGH COURT

**COUNSEL**

E. ANAGLATE FOR S. ANAGLATE FOR APPELLANT

AKUA NYARKO ANTWI (STATE ATTORNEY) FOR SSRAKUBEA ASANTE  
MANTE FOR THE REPUBLIC