

**IN THE CIRCUIT COURT HELD AT SOGAKOPE ON THURSDAY, 8TH
DECEMBER, 2022 BEFORE HIS HONOUR ISAAC ADDO, THE CIRCUIT
COURT JUDGE**

CASE NO.: CC31/2022

THE REPUBLIC

VRS

**JUSTICE DZIVOR
FRANK ADDO
YAO TEFFUTOR**

ACCUSED PERSONS PRESENT

SERGEANT NENE OMAN 'V' FOR THE REPUBLIC PRESENT

NO LEGAL REPRESENTATION FOR THE ACCUSED PERSONS

JUDGEMENT

The Accused persons have been standing trial before this court since 11th November, 2021 for the following offences contrary to the Criminal Offences Act, 1960 (Act 29):

- i. Conspiracy to commit crime to wit Stealing contrary to section 23(1) and 124(1);
- ii. Causing Unlawful Damage contrary to section 172;
- iii. Unlawful Entry contrary to section 152;
- iv. Stealing contrary to section 124(1); and

On their first arraignment before this court on the 11th November, 2021, all the Accused persons pleaded Not Guilty to the charges proffered against them. By their Not Guilty plea, they submitted themselves to full criminal trial.

FACTS OF THE CASE

All the Accused persons reside at Battor. The 3rd Accused person provided information to the 1st and 2nd Accused persons that there were a lot of things in Andrews Prince Dablu's self-contained building and that they should steal and sell same so that they could share the booty. The Accused persons conspired, went to the complainant's brother, Andrews Prince Dablu's said house with an object, caused damage to the foreign security door. The Accused persons entered the building, ransacked the rooms and made away with one Samsung double door fridge, 38 pieces of bowls and plates, one chopping board, one kepas blender, one metal grill mesh, three liters bottle of oil, sets of ladles, two knives, one frying pan, six table spoons, two packs of wine glass, two W/C gel, four electronic bathroom mirror, a set of glass shelves, two boxes of ceiling fans, four door mats, six pieces of toilet roll, five towels, six curtains, eight sets of bed sheets, two seasoning cans, eight blankets, one Binatone microwave, three sets of cooking utencil, and eighteen cartons of floor tiles. Investigations led to the arrest of the Accused persons. Upon further investigations, the 1st and 2nd Accused person led police to their residence where all the items were retrieved with the exception of two boxes of ceiling fan, eighteen cartons of floor tiles and five bathing towels.

The prosecution in establishing its case called three (3) witnesses to testify in court.

PW1 (Jacob Galah) told the court that on the 24th October, 2021, they went to his brother Andrews Dablu's house and detected that the house had been broken into by destroying the back door and made away with most of the items in his

building. So he lodged a complaint at the Police Station and brought in the investigator who took pictures of the rooms and where the incident occurred.

PW2 (Linda Amemor) told the court that on the 25th October, 2021 at about 10:00pm, she was washing her clothes when she spotted the 1st and 2nd Accused persons carrying a double door fridge. According to PW2, they placed the said fridge in her porch. The 1st Accused person told her that he bought the fridge at GHC2,400.00 but because he needed money for his children's school fees he will sell it to her at GHC1,700.00. So she asked him if it was true that the fridge belonged to him and he answered in the affirmative. It is the case of PW2 that she told them to do and she called Dziwornu of the Battor Neighbourhood Watch Committee of the issue because she suspected the fridge was stolen. She then called the suspects after some few minutes and told them someone wanted to buy same and in the process they were arrested.

PW3 (General Corporal Solomon Essel-Quayson) investigated the case. PW3 relied on his Witness Statement together with the exhibits attached.

THE CASE OF THE DEFENCE

The Accused persons in opening their defence testified themselves and did not call any witness(es) to testify in support of their case.

The 1st Accused person told the court that he had never been to the house where the theft happened before. According to him, it was the 3rd Accused person who worked in that house.

The 2nd Accused person told the court that he did not know the house of the complainant. It is the case of the 2nd Accused person that it was the 1st Accused

person who told him that someone came to sell the items to him. That he asked him to assist him to carry them. That after assisting the 1st Accused person, he asked him where he got the things from, and that was when the 1st Accused person told him that it was the 3rd Accused person who sold them to him. According to the 2nd Accused person, when he heard that someone's house had been broken into, he further asked the 1st Accused person if those things were the items that were stolen but the 1st Accused person maintained that it was the 3rd Accused person who sold them to him. That the only thing he saw amongst the items was the fridge he carried on his head.

The 3rd Accused person told the court that he knew the 1st Accused person during his childhood when he used to live few meters from their house. The Accused person denied knowing anything about this case. It is the case of the 3rd Accused person that he has not sold any items to the 1st Accused person.

The legal issues that emerged for determination after the end of the trial are as follows:

- i. Whether or not the Accused persons agreed or acted together with a common purpose to commit the offence.
- ii. Whether or not the Accused persons caused damage to the foreign security door of PW1.
- iii. Whether or not the Accused persons unlawfully entered the room of PW1.
- iv. Whether or not the Accused persons dishonestly appropriated the items mentioned in the charge sheet.

BURDEN OF PROOF

The common law rule that a person was presumed innocent until the contrary was proved or he pleaded guilty is reinforced by Article 19(2)(c) of the 1992 Constitution which reads:

“A person charged with a criminal offence shall ----- (c) be presumed to be innocent until he is proved or has pleaded guilty.”

The mandatory requirement that the guilt of the person charged ought to be established beyond reasonable doubt and the burden of persuasion on the party claiming that a person was guilty, has been provided for in sections 13 and 15 of the Evidence Act, 1975 (NRCD 323). Significantly, whereas the prosecution carries that burden to prove the guilt of the Accused beyond reasonable doubt, there is no such burden on her to prove her innocence. At best she can only raise a doubt in the case of the Prosecution. But the doubt must be real and not fanciful.

In *Republic v. Adu-Boahen & Another* [1993-94] 2 GLR 324-342, per Kpegah JSC, the Supreme Court held that:

“A plea of not guilty is a general denial of the charge by an accused which makes it imperative that the prosecution proves its case against an accused person When a plea of not guilty is voluntarily entered by an accused or is entered for him by the trial court, the prosecution assumes the burden to prove, by admissible and credible evidence, every ingredient of the offence beyond reasonable doubt”.

THE LAW AND EVALUATION OF EVIDENCE

Section 23(1) of Act 29 provides that:

“Where two or more persons agree or act together with a common purpose for or in committing or abetting a criminal offence, whether with or without a previous concert or deliberation, each of them commits a conspiracy to commit or abet the criminal offence.”

In *Frimpong @ Iboman v Republic* [2012] 1 SCGLR 297, Dotse JSC stated thus:

“It is important to note that in this case, it is sufficient if the prosecution succeed in proving the essential ingredients of the offences of conspiracy to commit robbery and robbery. For the offence of conspiracy, it is necessary to establish the following:-

- i. Agreement to commit the unlawful act of robbery – acting for a common design. There need not be any prior deliberation.
- ii. Intention on their part to commit that unlawful act – this was manifested in their common pursuit of the robbery agenda.”

Section 172 (1)(a) of Act 29 provides as follows:

A person who intentionally and unlawfully causes damage to any property by any means whatsoever to a value not exceeding GH¢100.00 or without a pecuniary value, commits a misdemeanour.

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

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

The elements of the offence of unlawful entry are contained in *section 153 of the Criminal and Other Offences Act, 1960 (Act 29)* which read as follows:

"A person unlawfully enters a building if he enters otherwise than in his own right or by the consent of some other person able to give such consent for the purposes for which he enters."

In Kanjarga vrs The State [1965] GLR 479-483, per Ollennu JSC:

"To constitute the offence of unlawful entry, the entry must be made with a purpose or intent to commit a crime. It follows that in addition to proving entry, the prosecution, to succeed, must prove that intent to commit a crime in the premises existed at the time of entry and was the purpose for the making of the entry".

Section 125 of Act 29 defines stealing as follows:

"A person steals who dishonestly appropriates a thing of which that person 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".*

It is clear from the definition that a person cannot be guilty of stealing unless he is proved to have appropriated a thing in the first place.

Section 122 (2) of the Criminal and Other Offences Act, 1960 (Act 29) defines Appropriation as follows:

“An appropriation of a thing in any other case means any moving, taking, obtaining, carrying away, or dealing with a thing, with the intent that some person may be deprived of the benefit of his ownership, or of the benefit of his right or interest in the thing, or in its value or proceeds, or any part thereof”.

For the prosecution to sustain a charge of stealing therefore, it must be able to prove the above ingredients beyond reasonable doubt.

In this instant case, there was no eye witness account or direct evidence concerning the breaking into the building of the complainant. The Supreme Court stated in the case of Dexter Johnson v. The Republic [2011] SCGLR 601 @ 605 at holding 2 as follows:

“Circumstantial evidence was quite usual as it was rare to prove an offence by evidence of eye-witnesses; and inferences from the facts proved might prove the guilt of the appellant. A presumption from circumstantial evidence should be drawn against the appellant only when that presumption would follow irresistibly from the circumstances proved in evidence; and in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the appellant and incapable of explanation upon any other reasonable hypothesis other than that of guilt. See also State v. Anani Fiadzo [1961] GLR 416 and Bosso v Republic [2009] SCGLR 420.

In the course of the investigations, most of the items were retrieved from the residence of A1 and A2 where they both lived. The items retrieved were one Samsung double door fridge, 38 pieces of bowls and plates, one chopping board, one kepas blender, one metal grill mesh, three liters bottle of oil, sets of ladles,

two knives, one frying pan, six table spoons and two packs of wine glass. Others were two W/C gel, four electronic bathroom mirror, a set of glass shelves, two boxes of ceiling fans, four door mats, six pieces of toilet roll, five towels, six curtains, eight sets of bed sheets, two seasoning cans, eight blankets, one Binatone microwave, three sets of cooking utencil, and eighteen cartons of floor tiles. However, two boxes of ceiling fan, eighteen cartons of floor tiles and five bathing towels were not found.

It is the case of the 1st Accused person that it was the 3rd Accused person who sold all the items to him. However, when the 1st and 2nd Accused persons cross examined PW1, the 1st Accused person supported by the 2nd Accused person claimed ownership of some of the items. The following is what transpired when the 1st and 2nd Accused person cross examined PW1 on the 25th March, 2022:

Cross examination of PW1 by the 1st Accused person:

Q. I put it to you that the items you claim have been stolen, some of them are my personal items.

A. That is not true.

Q. The blender and the cooking utencils are mine and I bought them by the roadside and the base of the blender is still with me now.

A. That is not true because if something belongs to you, you wouldn't hide them in the ceiling. During investigations when the police visited your house, all the items were retrieved from your ceiling. (Emphasis mine)

Cross examination of PW1 by the 2nd Accused person:

Q. I put it to you that as mentioned by A1 some of the utencils and the blender do not belong to your brother but for A1.

A. That is not true. A1 was arrested when he was attempting to sell the fridge. The items were retrieved from the ceiling.

Q. I put it to you that the items were retrieved from A1 and I have asked him before where he got the items from and he said he bought them so I don't know anything about the items.

A. It is not true.

Q. I put it to you that I didn't know A1 who is my brother to be a thief.

A. That is not true. (Emphasis mine)

When the 1st Accused person was cross examined by the prosecution on the 10th October, 2022 concerning the items, the following is what he told the court concerning where they got them from:

Q. On the 25/10/2021, you told the police that the items mentioned to you are the very items you bought at Sege. Not so?

A. It is true. The man told me that if I mention his name he will take me to a fetish but later I mentioned his name.

*Q. You agree with me that you told the police that **you bought all the items** at GHC600.00.*

A. Yes, it is true. A3 was the one who sold them to me.

Q. So you agree with me that your statement that you bought these things at Sege is not correct.

A. It is not true. A3 sold them to me.

Q. You agree me with that the exhibits or the items some of them were kept under your bed, some on your ceiling.

A. That is the truth.

Q. I put it to you that all the items listed are not yours and you are not the owner.

A. No. They don't belong to me.

Q. I put it to you that the items belong to Prince Andrews Dablu.

A. I cannot tell. (Emphasis mine)

Also, when the 2nd Accused person was cross examined by the prosecution on the 18th October, 2022 concerning where they got the items from, the following is what transpired:

Q. You agree with me that some of the exhibits were retrieved from the ceiling in the room where you live with A1.

A. Yes, some were seen in the ceiling and some in the room.

Q. So you agree with me that you were in possession of the property that did not belong to you.

A. Yes, I agree because A1 told me he bought the items, that is why I went to help him to convey them home.

The 1st and 2nd Accused persons also submitted contradictory Cautioned and Further Cautioned Statements to the police on the 25th and 27th October, 2021 respectively. All the statements were taken from the Accused persons in compliance with section 120 of the Evidence Act, 1975 (NRCD 323).

In the case of the *State vrs Otchere & Others* [1963] 2 GLR 463-531, the Court stated at holding 14 as follows:

"A witness whose evidence on oath is contradictory of a previous statement made by him whether sworn or unsworn is not worthy of credit and his evidence cannot therefore be

regarded as being of any importance in the light of his previous contradictory statement unless he is able to give a reasonable explanation for the contradictions"

For the avoidance of doubt, I reproduce the Cautioned Statements of the 1st and 2nd Accused persons given to the police on the 25th October, 2021 below. Cautioned Statement of the 1st Accused person given to the police on the 25th October, 2021:

"About three days ago, I was in Accra-Circle around (Circle) area at Vodaphone office to withdraw USD 250 which I succeeded in defrauding someone through the internet. I then bought a ticket at the Tudu Station to Battor. On reaching Sege, I spotted the fridge and all the other items by the road side. I alighted and saw three guys around same. They told them I wanted to buy the said items if they were selling same. We bargained on the price for all the items at GHC600.00. I got a tricycle and took my items to my house at Battor. I got home at 9:00pm. I sent the fridge to someone's house because I do not want people to know because it was stolen items. I wanted to sell them because I know I did not buy good things. I kept them under my bed and the ceiling together with my brother, Frank." (Emphasis mine)

Cautioned Statement of 2nd Accused person given to the police on the 25th October, 2021:

"On 23/10/2021 about 8:00pm, my brother Justice told me that he has some items at Battor SHS area so I should lead him to go for them because it was sold to him. I went with him and on reaching the house which is a self-contained with a fence wall so I joined him to move all the items through the bush to our house. On 24/10/2021, we both went there again for another set of items. I insisted that

*we use the fridge in his room but he refused and told me that he is doing business so he wants to sell same. On the first day we went there twice. On 25/10/2021, I went and carried the fridge from Robert's room, after Justice told me one lady wanted to buy same so I brought it to the said lady's house. When he, Justice was arrested his wife told me to send the rest of the items on the ceiling, and I did so. Justice warned me not to tell the truth, I should tell the police that I am aware he bought the said items from Sege. Justice did not return from Accra to Battor, we have been in the house about one week now. **Justice took the metal part of pick axe which he used same to damage the door.** Justice is teaching me in fraud but we are not getting money. Justice has given one of the brand new bed sheets to his girlfriend b name Cynthia." (Emphasis mine)*

In the Further Cautioned Statements given to the police by the 1st and 2nd Accused persons which contradict their Cautioned Statements, they told the police that the 3rd Accused person was the mastermind of the stealing operation because he told them that he had a spare key to the building. According to the 2nd Accused person, the 3rd Accused person told them that because he was the caretaker of the building and in order not for him to be suspected, he (3rd Accused person) decided to damage the door. This, the 3rd Accused person has denied. Assuming without admitting that the 3rd Accused person was the caretaker of the building (which he has denied anyway), and he had a spare key and this operation happened, wouldn't the landlord have still suspect him? Below are the Further Cautioned Statements of the 1st and 2nd Accused persons given to the police on the 27th October, 2021.

Further Cautioned Statement taken from the 1st Accused person on the 27th October, 2021:

“On the 22/10/2021 about 7:30pm, I was sitting in front of my door when Agbey came that he had in his possession the keys to the building of his uncle which there are some items like fridge, mattress, oil, toilet roll, spoons, etc. and sell same to me. I replied that it was late so we should make it tomorrow. On 23/10/2021, Agbey called me to inform me that he came to the house but he did not see me which he left a message with my brother, Frank. He said that he was selling Indian hemp so we should come. I together with Frank went there to his house. On reaching there he told me that he wanted to lead me to the said building but I told him I cannot. On the next day, Frank together went to the building which he came to confirm to me of their enquiries to the area of the building. I asked Frank what Agbey informed him about the house and he replied that Agbey informed him that he had a spare key to the building and that the owner is not around. I went to Accra to look for some money but I cannot recollect the actual date. Agbey called me whiles I was with my mum in Accra so I told him I would be coming soon because of my kids. Two days later I came to Battor but it was raining and I arrived home around 8:30pm. Frank told me that Agbey came wearing a rain coat and informed me that he wanted us to go to the said building which is a self-contained but I told him that I cannot pass through the rain, yet he can call me in case of anything. Whilst I was on the internet browsing my wife gave me my other phone which indicated that Agbey was calling and he further told me that he has broken into the room and brought the fridge together with other items behind the fence wall. He again told me that he was sending a tricycle through the cemetery junction road towards the place. I together Frank also went to meet him there, on our arrival Agbey started shouting my nickname big Soul!!! He stated that these are the items and that there is a flat screen in it so the price will go up. I checked the items but there was no flat screen but it was electric something. I told Agbey the item he claimed to be flat screen is not so what do we do now. That I cannot put all these items in the same room. I together with my brother picked the items in the big polythene bag to the house and later went for the fridge which I sent same to Robert’s house in his absence and

placed same there but he knew nothing about the items. Agbey called me that he had something so we should come to his house and I went there alone. He told me to pay GHC1,200.00 but we bargained the price at GHC600.00. I went for a microwave and two packs of wine glass and paid him GHC600.00 in three GHC200.00 notes. Agbey warned us that he is a fetish priest so when we get caught we should not mention his name else he will show us something."

Further Cautioned Statement of the 2nd Accused person given to the police on the 27th October, 2021:

"On Tuesday, 19/10/2021 about 12:00am, cash man who is my friend together with four others who I do not know but can identify them when seen. That they came for a funeral at Mepe. They came to me and Justice to show them where they can get Indian hemp to buy so we also took them to one Agbey alias IGP. They bought their Indian hemp and left us there. Whilst we were returning home Agbey alias IGP followed us to the school Park behind the Post Office area where he told us that one of his family members who is living abroad has his house keys with him. That we should go there and steal his properties. I replied that I have not stolen before and that I cannot do same. On 21/10/2021 about 1:00pm Agbey alias IGP came to me and took me to where the said house is but I stood on the road as IGP went into the house. We later returned to our homes. On 22//10/2021 about 7:00am Agbey alias IGP came to us in the house to inform us that he has been able to break into the house and picked the items which he had packed them behind the wall near a cassava farm. I asked Agbey alias IGP why he broke into the house whilst he informed us that he had the keys to the said building. He replied that when he uses the key without breaking into same his said family brother would suspect him. On same day about 7:00pm, I together with my brother Justice went into the bush where he packed the items and collected them from there to our house. My brother Justice told me that he bought the said items from Agbey alias IGP at the cost of GHC600.00 which he had paid

him but IGP did not issue him with any receipt. Agbey alias IGP warned us not to mention his name that he was the one who stole the said items. He also informed us that he sold the tiles to someone who he did not disclose his identity to us. I swear that I and my brother Justice did not enter into the house. Agbey alias IGP is the master mind behind the operation. I was afraid to mention IGP's name because he warned us not to do so, that was why I said it was me and my brother. I am very sorry for all the happenings. Everyone in Battor knows that IGP is a thief. On 27/10/2021, while in the cells IGP came to us asking that, was it fair that we mention his name, and this informed my decision to give the real story."

The 3rd Accused person upon his arrest and during the trial has maintained his innocence in this case. For instance, in his Cautioned, Further Cautioned and Charge Statements, he maintained his innocence. Also, in opening his defence, his testimony remained firm and unshaken. The following are the three statements given to the police by the 3rd Accused person:

Cautioned Statement of A3 given to the police on the 26th October, 2021:

"On 26/10/2021, I was in my house when the police came for me that someone said I am part of a stealing case. I do not know anything about the said case. The bag containing the substance suspected to be weed or Indian hemp is also not mine. I did not pass on any lighter to anyone. I do not even know how to smoke. I have worked in so many places in the Battor town so I cannot tell where the crime occurred. I do not remember conspiring and stealing anyone."

Further Cautioned Statement of A3 given to the police on the 27th October, 2021:

"I do not know any Justice or Big Soul. I was employed by Justice to weed his father's house for him when his father passed on. I have since not got in contact in anyway with

him. I do not know anything about the stealing case. He is not my friend. I do not even know where the crime was committed but I have worked for many homes in Battor."

Charge Statement given to the police by A3 on the 27th October, 2021:

"I do not know any Justice or Big Soul. I was employed by Justice to weed his father's house for him when his father passed on. I have since not got in contact with him in any way. I do not know anything about the stealing case. He is not my friend. I do not even know where the crime was committed but I have worked for many people in Battor."

Section 18 (2) of the Evidence Act, 1975 (NRCD 323) provides that: *"An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts found or otherwise established in the action."*

This Court is allowed to found a conviction of an Accused person upon inference of his guilt from circumstantial evidence available to the Court. However the inference must be logical and reasonable. All the evidence adduced in this trial point to one and only one conclusion, that it was the 1st and 2nd Accused persons who committed the offences. I find that the crime was indeed committed and the 1st and 2nd Accused persons can thus be properly and safely convicted of the offences of Conspiracy, Causing Unlawful Damage (only the 1st Accused person), Unlawful Entry and Stealing.

Following the above, I hereby find the 1st and 2nd Accused persons guilty of the offences and they are accordingly convicted. However, the 3rd Accused person is hereby acquitted and discharged.

SENTENCING:

In sentencing the 1st and 2nd Accused persons, I take into consideration of their plea for mitigation and the fact that they are first time offenders and also young men, and also the fact that they have been in police lawful custody for some time now. I also consider the fact the Accused person was the mastermind behind this operation. Also, looking at how premeditated the 1st and 2nd Accused persons acted, coupled with their greed and wickedness in taking out virtually everything from the house, passing a deterrent sentence on them will be appropriate. In the circumstances, I hereby sentence the 1st and 2nd Accused persons as follows:

Count One: The 1st and 2nd Accused persons will serve a prison term of Five (5) IHL each.

Count Two: The 1st Accused person will serve a prison term of Five (5) years IHL.

Count Three: The 1st and 2nd Accused persons will serve a prison term of Five (5) years IHL each.

Count Four: The 1st Accused person will serve a prison term of Twelve (12) IHL and the 2nd Accused person will serve a prison term of Five (5) years (12) years IHL each.

All sentences shall run concurrently.

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ISAAC ADDO
CIRCUIT JUDGE
8TH DECEMBER, 2022