

IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON
WEDNESDAY THE 30TH DAY OF NOVEMBER, 2022 BEFORE HER
HONOUR ENID MARFUL-SAU, CIRCUIT COURT JUDGE

CASE NO. D7/68/2020

THE REPUBLIC

VRS.

1.ANTHONY ADU

2.ROBERT ANTWI

ACCUSED PERSONS PRESENT

PROSECUTION:PW/ C/INSP. MARY AGYAPONG PRESENT

COUNSEL: F.A. ACQUAYE ESQ. FOR ACCUSED PERSON PRESENT

JUDGMENT

According to prosecution, the Complainant is an Accountant and Managing Director of ACEA Microfinance Co Ltd, where the Accused Persons were formerly employed as Credit Manager and Credit Officer respectively. In January, 2019, complainant made a report at the Police Station that the Accused Persons had embezzled money and left the company without notice. The Accused persons were arrested, and an audit firm was engaged to audit the work of the Accused Persons. Prosecution says that the Audit Report disclosed that A1 suppressed an amount of GH¢13,144.50 and A2 suppressed an amount of GH¢13,351.90. Based upon these facts, the Accused Persons were charged with one count each of Stealing contrary to Section 124(1) of the Criminal Offences Act, 1960 (Act 29).

Prosecution called three witnesses in support of its case. PW1 was Emmanuel Kofi Osei, PW2 was Emmanuel Kojo Kissi Boateng and PW3 was the Investigator D/Sgt Prince Oku.

By a Ruling dated 22nd March, 2022, the Accused Persons were called upon to open their defence to the charge. Both Accused Persons testified on oath.

A1 testified that he resigned from the company and did not leave the company without notice as claimed. According to him, he personally handed his resignation letter to the CEO and copied the Operations Manager as well. He stated that he gave the company the whole of November and December, 2018 to look into his activity and prompt him when necessary. He stated that as a Credit Manager, he did not have an identity registration which will allow him to post any amount into a customer's loan account and it was his duty to supervise staff and to access the credit worthiness of customers before granting them loans. He testified that the company had a software it was using such that each loan client had been assigned to a particular field staff or teller and that no single client was assigned to him as a loan manager. He added that it is the field officers who are responsible for going round to collect money from customers and thereafter post same into their accounts and his duty was only to ensure that customers pay their loans. He testified that he did not take part in the audit and did not sign the records, therefore it is not true that he stole money from the Company. According to him in the case of the customer named Dora Adesi Adjei who he is accused of stealing from, before the loan amount of GHc5,000.00 was given to her at a rate of 5% a month and at a point the funds were not coming, they used her guarantee payment to set off the loan balance, therefore she did not pay the loan amount to say that the balance was stolen. He stated that as to why some staff did not key in the exact amount given to them, he cannot tell.

A2 testified that he worked in the company as an Administrative Assistant supporting office duties and running errands. He testified that he resigned from the company and handed his resignation to Operation Manager and Managing Director on 21st December, 2018. He testified that he did not have any access to register a customer, process loans or post any amount into any customer's loan account. He testified that he was only using motor bike to support the errands of the company. He added that he did not take part in the audit work and therefore did not sign the report. He testified that it is untrue that he could not be found because even after resigning, the staff and operations manager called on several occasions for reconciliation. He stated that some customers had deposits in their account and told credit officers to use their money to set off their balance and other clients have simply not finished payment.

In the case of **MANTEY AND ANOTHER v. THE STATE [1965] GLR 229** it was held as follows:

"On a charge of stealing, it is the prosecution's duty to prove an animus furandi against the accused..."

Also, in **AMPAH v. THE REPUBLIC [1977] 2 GLR 171** it was held as follows:

"A statute, creating and defining an offence, determined the ingredients of the offence which were to be proved. To establish the offence of stealing as defined by section 125 of Act 29, the prosecution was required to prove the following three elements: (i) dishonesty, (ii) appropriation, and (iii) property belonging to another person."

It is undisputed that the Accused persons were charged and arraigned before this court based upon the adverse findings made against them in Forensic Audit Report which was tendered as *Exhibit H*. In the trial of this matter, it is

apparent that Prosecution also relied heavily on *Exhibit H* as conclusive evidence of the charges levelled against the Accused persons.

In *Exhibit H*, the auditing firm indicates that for A1 they were able to rely on loan customers files, loan documents, guarantee fund and savings records in the system to do their independent investigation. Based on the documents made available and the number of loan customers interviewed, they established that GH¢9,269.50 is the total amount A1 had suppressed under loan repayments alone and concluded that an amount of GH¢13,144.50 had been misappropriated by A1. For A2, the Report indicated that they were able to arrive at the amounts based on loan customers statements and verifications made by them of misappropriation of cash of GH¢13,351.90.

Exhibit H indicated a number of limitations to the audit being the inability to access customers, customers passbooks and loan customers files. Therefore, what they relied upon was what they found in the system. A1 testified that the company had a software it was using such that each loan client had been assigned to a particular field staff or teller and that no single client was assigned to him as a loan manager.

In this case, Prosecution had a burden of proving its case beyond reasonable doubt, yet the said loan customer files, loan documents and savings records were not tendered before this court. Again, none of the said clients were before the court to testify. Further there has been no evidence produced before the court to show that A1 and A2 only were the staff who had access to the said system based upon which some of the findings of the audit were made.

In the case of **REPUBLIC v. ATTORNEY-GENERAL AND OTHERS; EX PARTE OWUSU [1982-83] GLR 311** it was held as follows:

“An audit inquiry was concerned principally with the examination of books of accounts, records of transactions, financial management procedures were in line with sound economic procedures and if so whether those procedures were being followed. Such an examination could best be done by an accountant...”

(3) An audit inquiry was not a lis inter partes. In it, documents were the accusers unless they were forged. A person making an audit inquiry was not under any duty to adopt a procedure analogous to a judicial procedure. He was not required to determine questions of law and facts and he did not exercise a limited or judicial discretion...”

Clearly, the audit firm was not playing a judicial role when it set out to do the audit. Therefore, having made adverse findings upon which Prosecution decided to have the Accused Persons prosecuted, Prosecution was under a duty to lead sufficient evidence to substantiate the ingredients of the charges levelled against the Accused persons reaching a degree not merely of probabilities but of proof beyond reasonable doubt. In the case of **THE STATE v. AGYEKUM AND AMOFA [1962] 1 GLR 442**, it was held as follows:

“a mere shortage in accounts without proof of how the shortage occurred is not enough to support a charge of stealing: R. v. Okorodudu (1947) 12 W.A.C.A. 129 cited. In the instant case the prosecution has not alleged nor proved a misappropriation of specific amounts, nor indicated how the shortage occurred. The evidence proves only a general deficiency and is not enough to found criminal responsibility.”

In the instant case, although *Exhibit H* indicates that some shortages have occurred against Accused persons, there is not enough satisfactory evidence on record to show that the Accused persons misappropriated the said respective amounts in the year 2018. In fact, the covering letter to *Exhibit H*

indicates that the Report is not final but an interim report. It states further that the report will be final only after they have taken evidence from the former staff members suspected to be involved. The audit was into allegations of misappropriation of funds in the Credit Department of the company. Were the Accused persons the only staff members suspected to be involved in the misappropriation? Were the Accused persons the only staff at the Credit Department? Did they have access to the company's system? If they did, were they the only staff who had access to the system? These are all questions which have been left unanswered at the close of the case.

I consider that this court would be renegeing on its duty as a trier of fact and law to base a conviction solely on an interim report which indicates expressly the numerous limitations based upon which its decisions and recommendations were arrived at. I find that doubts have been created in the case of Prosecution and it has not been proven beyond reasonable doubt that the Accused persons stole the amounts of GH¢13,144.50 and GH¢13,351.90 respectively. A1 is therefore acquitted on count 1 and A2 is acquitted on count 2.

**H/H ENID MARFUL-SAU
CIRCUIT JUDGE
AMASAMAN**