

IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON THURSDAY, 14<sup>TH</sup>  
DAY OF DECEMBER 2022 BEFORE HIS HONOUR KWABENA KODUA OBIRI-  
YEBOAH, CIRCUIT COURT JUDGE.

D4/132/2020

THE REPUBLIC

VRS

1. EBENEZER ADJETEY ANNANG
2. SOLOMON LAMPTEY

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JUDGMENT

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The accused persons were arraigned before this court on one count each.

A1 was charged with Stealing: CONTRARY TO SECT: 124 (1) OF THE CRIMINAL AND OTHER OFFENCES ACT, 1960, ACT 29.

A2 was charged with Dishonestly receiving contrary to section 146 OF THE CRIMINAL AND OTHER OFFENCES ACT (ACT 29) 1960.

Article 19(2(c)) provides that:

“A person charged with a criminal offence shall (c) be presumed innocent until he is proved or has pleaded guilty”. See **GLIGAH & ATISO v THE REP** [2010] SCGLR 870

The accused persons were charged each with the offences as stated above and the case was first called before the Court on 12/08/2020. The accused persons pleaded not guilty to the charges brought against them and they were granted bail by the court. In the

circumstance, prosecution therefore assumed the duty to prove the guilt of the accused persons and has to do that with the certainty required of the law.

**Counsel for the A1 in his written submission before the Court referred to the case of The Republic v District Magistrate Grade II, Osu; ExParte Yahaya, where His Lordship Brobbey J (as he then was) held that: “One of the cardinal principles of criminal law in this country is that when an accused person pleads not guilty, his conviction must be based on evidence proved beyond reasonable doubt.”**

Per the facts of the case attached to the charge sheet, the Complainant in this case is the Chief Executive Officer of Flip Bar and owns an apartment located at Osu. The first accused is a cleaner for the complainant and second accused is a Bar attendant working with a different company. During the year 2019, the complainant imported assorted foreign hard liquor comprising; Hennessy, Moet Champagne, Jack Daniel, Jonny Walker Gold and Black Label, Grey Goose and others to boost his business. The complainant converted his bedroom into a warehouse. The complainant fully stocked the bar and kept a total of 560 bottles of the assorted hard liquor in his bedroom and travelled to USA. Complainant handed his spare key to his father for him to be able to access the bedroom should the bar run out of stock.

In the absence of the complainant, first accused person deceived the complainant's father that the complainant had sent him to pick up items from his room. Complainant's father who never suspected any foul play handed over the warehouse key to the first accused. First accused person later returned the key without locking the doors. This gave him the opportunity to enter the room at any time after turning off the CCTV. First accused capitalized on this to steal the drinks from the room by removing the bottles from their boxes in bits and selling same to others.

During the month of November 2019, the complainant returned from USA and detected that most of the drinks had been removed from the boxes. He quickly took stock and realized 268 bottles of assorted hard liquor valued at GHC 95,529.15 had been stolen and he highly suspected the first accused. The matter was reported to the Osu Police leading to the arrest of the first accused person. During investigation first accused person denied the offence. Soon thereafter, information led to the arrest of the second accused for having bought some of the stolen drinks. Second accused admitted buying five bottles from the first accused at GHC 100 per bottle to organize a party. First accused person after realizing that second accused had implicated him, he then rescinded his denial and admitted stealing only five bottles to conform to second accused's admission of having bought five bottles from the first accused. Accused persons were subsequently charged with the offences as stated on the charge sheet and arraigned before the honourable court.

The principle of law is that the prosecution must prove the guilt of the accused as mandated by **section 11 of the Evidence Act, 1975, NRCD 323** which states: "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". **In the case of Domena v Commissioner of Police (1964) GLR 563 @ 568 it was put this way: "Our law is that by bringing a person before the court on a criminal charge, the prosecution takes upon themselves the onus of proving all the elements which constitute the offence to establish the guilt of the defendant beyond reasonable doubt, and that onus never shifts. There is no onus upon an accused person, except in special cases where the statute creating the offence so provides; stealing is not covered by such a statute. (See; Bater v Bater (1951) All ER 458. See also Oteng v The State (1966) GLR 355**

Counsel for A2 in his written submission stated that, “In the case of **Woolmington v DPP (1935) AC 462**, the Court stated that no matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained”. He went further to say, And in the case of **Public Prosecutor v Yuvava (1970) AC 913 @ 921** stated as follows; “Generally speaking, no onus lies upon a defendant in criminal matters to prove or disprove any fact; it is sufficient for his acquittal if any of the acts which if existed, would constitute the offence with which he is charged are not proved”.

The prosecution must be able to prove the ingredients of the offence as demonstrated in the facts as presented to the court. In **Elis Tamakloe v The Republic CM No. J7A/1/2010**, 20<sup>th</sup> January 2011. Justice Atuguba relying on the decision in **Donkor v Republic 1974 2 GLR 254-258** stated thus: where a statute creates an offence, it is the duty of the prosecution to prove each and every element of the offence which is sine qua non to securing conviction. Unless the statute places a particular burden on the accused, the fundamental and cardinal principle as to the criminal burden of proof on the prosecution should not be shifted even slightly”.

A1 was charged with stealing and section 124 of the Criminal Offences Act 1960 (Act 29) provides; “A person who steals commits a second-degree felony” and section 125 of Act 29 defines stealing as; “A person steals who dishonestly appropriates a thing of which that person is not the owner. The essential ingredients of the crime of stealing have been distilled over the years from case law to be A. the subject matter of stealing belong to another person. B. the accused appropriated the subject matter, and c. the appropriation is dishonest. See; **Ampah and Another v The Republic (1976) 1 GLR 403 @ 412**, **Ampah v The Republic (1977) 2 GLR 171, CA**, **Lucien v The Republic (1977) 1 GLR @ 351**, **Cobbina V The Rep (2020) GHASC 4**.

The charge of A2 was dishonestly receiving. Section 146 of Act 29 provides as follows: “A person who dishonestly receives property which that person knows has been obtained or appropriated by a criminal offence punishable under this chapter commits a criminal offence is liable to the same punishment as if that person had committed that criminal offence. Section 147 (1) of Act 29 explains what constitutes dishonestly receiving and states “A person is guilty of dishonestly receiving any property which he knows to have been obtained or appropriated by any crime, if he receives, buys, or in any manner assists in the disposal of such property otherwise than with a purpose to restore it to the owner. Counsel for A2 referred the court to **Nyina v Commissioner of Police (1964) GLR 452, Salifu & Anor v The Rep. (1974) 2 GLR 291 @ 301.**

The prosecution during the hearing of the case called the witnesses PW1, the complainant, PW2, Bisa Bannerman, the father of the complainant and PW3 the investigator and they all gave evidence before the court, and they were subsequently cross examined by the two Counsel of the accused persons. PW3 in addition tendered various exhibits before the court. Exh A was a list of stolen drinks and the summation of quantity and amount prepared by complainant. Exh. B and C are Investigation Caution Statement and charge statement of A1 respectively. Exhibit D and E are Investigation Caution statement and Charge statement of A2 respectively. Exhibit F series were the photographs of the drinks and the empty boxes.

Now the issue before the court is whether the prosecution has been able to prove the ingredients of the offences of the two charges against the accused persons before the court.

PW1 in his evidence stated that A1 is a cleaner at complainant Flipbar and restaurant as well as a guest house located in OSU. Complainant said he travelled to the USA to visit family. He said he took stock of the drinks which he keeps in his bedroom which also serve as the storeroom. This was the complainant answer in cross examination.

Q21. The bedroom where the drinks were stored serves as your storeroom, not so.

A. Yes.

PW1 said I left a spare key to my bedroom with my father who takes care of all my belongings when I am out of Ghana and instructed him not to give it to anyone without his knowledge. He said further that anytime my sister must go into my room for any drink, we do video calls while she is in my bedroom so I can show her what she wants and where it is in my room. PW1 said during July to September A1 deceptively got the father PW2 to give his bedroom key to A1 and every time he had to clean there, he had to go for the key from PW2

PW1 then said in the month of September 2019, A1's Auntie who lives in the same house approached PW2 at Osu Ebenezer Presby church and told the father that she has seen A1 on several occasions giving out foreign alcoholic drinks to a young man called Nii Lantey. The witness then said that "my father suspected that the drinks might have been stolen from my bedroom".

PW1 further stated that on his arrival from the USA on November 29, 2019, he realised that the arrangement of the alcoholic drinks had been tampered with so he quickly retook stock to compare the stock with the one he took before leaving Ghana in May and realised the stock was short with about 160 bottles. PW1 said he then called a meeting with his father and that was when the father PW2 revealed to him what has been going on with A1. PW1 concluded that he reported the case to police where A1 was arrested and during investigations it became known that A1 stole the drinks and sold them to A2.

From the evidence of PW1 it was not only A1 who had access to his room but PW2, his sister, with whom he was doing video call anytime she went to his room. For this reason, Counsel asked the PW1 this question:

Q27. I put it to you further that your sister could have equally smuggle drinks from the storeroom.

A. No.

PW1 however did not realised that the arrangement of the alcoholic drinks had been tampered with, whiles in the USA even though he was doing video call with the sister, until his returned in November 2019. Per the facts presented by prosecution, as attached to the charge sheet, line 13, the prosecution said A1 returned the keys without locking the doors. This means that from then accessibility to the room is beyond A1, PW2 and sister of PW1. Therefore, from the evidence more people than the accused A1 had access to the room as the room was not locked afterwards.

PW1 was asked the question:

Q28. Any person could have had access to that storeroom to smuggle drinks from the room.

A. No because only one person had the key which is my father

Q29. I put it to you again that it is possible that your father who had the key could have smuggled the said drinks from the storeroom

A. No that is not possible because my father is the one that have been receiving the drinks over that period in my absence.

These questions are very crucial for the defence of the accused especially when the said information the complainant relied on to report the accused persons to the police came to PW2 long ago but same was not made known to the complainant until he returned and saw the tampered with arrangement and called a meeting with his father and sister before he was told about what the auntie of A1 told PW2.

PW 1 was asked in further cross examination:

Q23. Do you have a CCTV camera in your room

A. No

Q25. Then that means that you never saw the accused A1 smuggle any drink from the storeroom, not so.

A. No

Q26. I put it to you that you have no credible evidence to support the charge that it is A1 who stole the drinks.

A. That is very wrong.

It is not surprising the answer of the complainant PW1 because he has not provided any credible evidence that he saw the accused A1 taking or appropriating to himself 268 bottles of assorted hard liquor from his bedroom and none of the witnesses of the prosecution said they saw the accused taking or carrying the drinks from the bedroom of the complainant.

Interestingly the accused A1 was charged with dishonestly appropriating 268 bottles and same was the number on the prosecution exhibit A1 stock missing but PW1 in his witness statement paragraph 9 stated, "My stock was short with about 160 bottles of alcoholic drinks. This is against the backdrop that the accused took stock of all the foreign alcoholic drinks before he left himself and when he came, he again took stock himself alone all without the person he gave his keys to and instructed not to give it to anybody without his instruction.

PW2 was also called before the court and some of his evidence was challenged as hearsay by counsel for A1. Again, his evidence that only the accused had access to the room was challenged and counsel for the accused A1 tendered complainant statement through him



without objection to prove that his daughter which is PW1 sister also had access to the room.

PW2 then was asked these questions:

Q16. Was there a CCTV camera in the storeroom.

A. No, the CCTV cameras are in the bar and the corridors

Q17. Did any of these CCTV cameras capture A1 with any of the drinks you claimed is missing.

A. No

Q18. You stated in evidence that you live within Flip bar, did you yourself see the A1 with any of the drinks.

A. No

Q19. In substance your whole case is that because A1 had access into the room he is the likely suspect, not so.

A. Yes

Q20. I put it to you that there is no concrete evidence linking A1 to the drinks in question.

A. We have evidence.

PW2 was then asked questions about this auntie of A1 who informed him about what A1 has been doing at the Osu Ebenezer Presby Church and these were his responses:

Q21. What is the name of the aunty of A1 you claimed saw A1 with the drinks.

A. I don't know her name.

Q22. Where does she live.

A. I don't know

Q23. I put it to you that there is no aunty of A1 who informed you that she saw A1 with the drinks and that this is a creation of your mind.

A. There was.

PW2 was discharged after wards.

PW3 the investigator also gave evidence and in paragraph 7 and 9 this is what the investigator said.

P7. Investigation disclosed that, complainant travelled to USA and left his room keys with his father. Complainant installed a CCTV camera and connected it to his phone so he could monitor events at the facility whilst away.

P9 First accused person after receiving the keys, turned of the CCTV, went to open the complainant's room and quickly returned the keys without locking the door. First accused person has been entering the complainant's room to steal drinks by removing them from their boxes in bits and selling same to second accused person and others.

PW3 afterwards was cross examined, and the following questions were asked by Counsel for A1.

Q18. Your evidence also confirms that the complainant had installed a CCTV camera in the storeroom and connected it to his phone, not so.

A. That is so.

Q19. Did the CCTV camera capture any of the accused persons stealing any of the drinks.

A. No, A1 who was a staff and IT inclined had access to the CCTV and seldom turns it off whenever he wants to go in.

PW1 the complainant gave evidence that there is no CCTV in his room, and it is therefore surprising that the investigator says something to the contrary. He was then asked the following questions.

22. Did any of the CCTV camera within the premises capture A1 turning off the CCTV camera.

A. No, because there is no camera pointing to where the storage device is.

Q23. Did anyone see A1 turning off the CCTV camera.

A. No but the complainant gets reaction from where he is.

Q24. Did anyone see A1 steal any of the drinks in question.

A. No but A1 in the absence of the complainant deceived his father and got hold of the keys to access the warehouse.

PW1 never testify to any reaction and from PW1 evidence he had no knowledge of anything until his return to Ghana in November 2019.

From the evidence before the court the prosecution has not been able to prove the ingredients of the offence of stealing against the accused A1 as nobody saw A1 taking anything and no CCTV footages were produced before the court that show A1 taking anything belonging to the complainant.

Both the investigator, PW1 and especially PW2 reference a woman whom PW2 said does not know his name and this was the response of the investigator PW3 when he was cross examined by Counsel for A2.

Q7. In interviewing the interested parties, did any of them state they knew A2.

A. Yes

Q8. Which interested party indicated that he knew A2

A. An elderly woman who has been seeing the transactions between A1 and A2, however considering her relationship with the two she declined giving details of herself nor giving statement.

Q9. You want us to believe that an unnamed person unknown to the court and who has not given any evidence which may be tested claims to know A2, not so.

A. that is so

I must say that this said Auntie was a relevant witness for the case of the prosecution. From the record before the court, it is this witness who saw something and informed PW2 and would have been crucial to the case of the prosecution. The Prosecutor himself acknowledged this and when Counsel for A1 raised on objection, during the submission of the Prosecutor on the 23<sup>rd</sup> day of June 2021, he said, "I am referenced to paragraph 6, the witness clearly mentioned the person who gave the information to him. The witness never indicated whatsoever that he heard. The Auntie is there, and prosecution has not closed its case". Notwithstanding this classic and eloquent submission by the Prosecutor, low and behold, the prosecution closed their case without calling this auntie.

Now the only evidence left of the prosecution is only exhibit B which is the investigation caution statement of the accused A1. However as there is no evidence on record linking the accused to the charge and the contradictory evidence on record, the court cannot rely on same alone with respect to the charge brought against the accused A1 to find him and guilty and convict him on same. This is so when there is contradiction evidence on record, evidence creating doubt and especially when prosecution in the facts attached to the charge sheet stated that during investigation first accused denied the offence and then rescinded his denial and admitted later but we only have the evidence of admission on record. Again, looking at exhibit B, names like Uncle T and Joe are mentioned who are

not before the court and there is no evidence with respect to these individuals, but they are also implicated in the statement.

During the trial A1 decided and was communicated to the court by his Counsel that he will remain silent, and this is in line with the law as the prosecution must win their case and should not depend on the accused to fill in their gaps.

A2 open his defence and testify before the court. A2 denied the offence and in his evidence was able to create doubt in the case of the prosecution which will go to the benefit of the accused A2. This is what transpired during cross examination of A2.

Q9. I am putting it to you that Moet which you dishonestly receive from A1 was 60 dollars per bottle in the US market where the drinks came from in 2019

A. I do not know it was 60 dollars

Q10. I am again putting it to you that at that time you dishonestly received 1 litre Hennessey

A. I never received 1 liter Hennessey

From the record, there is no evidence supporting the case of the prosecution which they were putting across during cross-examination. Therefore, accessing the defence of the accused A2 his defence is reasonably probable.

It is trite law that the onus of proof which is always on prosecution if that onus is not successfully discharged a submission of no case should be upheld. **See Donkor vrs The State (1964) GLR 598 SC and Nyarko vrs The State (1963) 2GLR 59 SC.**

In the case of **Mali vrs The State (1965) GLR 710-715**, holding 4, it was held that, “where at the end of the case for the prosecution the court requires further evidence before it can decide on the issues raised in the case for the prosecution, the irresistible inference is that the prosecution has failed, and the accused should be acquitted”.

The accused persons A1 and A2 will therefore be found not guilty and acquitted

**HIS HONOUR KWABENA KODUA OBIRI-YEBOAH,  
CIRCUIT COURT JUDGE.**