

**IN THE CIRCUIT COURT HELD AT JASIKAN ON WEDNESDAY THE 8TH DAY
OF MARCH 2023 BEFORE HIS HONOUR JUDGE ALFRED KWABENA ASIEDU
ESQ.**

SUIT NO. D7/13/2023

THE REPUBLIC

VRS.

1. SULEY IBRAHIM

2. YAKUBU MOHAMMED

J U D G M E N T

The accused persons were charged with two counts of offences as follows:

COUNT ONE

STATEMENT OF OFFENCE

CONSPIRACY to commit crime, to wit Stealing: Contrary to sections 23(1) and 124(1) of the Criminal and Other Offences Act, 1960, Act 29

PARTICULARS OF OFFENCE

1.SULEY IBRAHIM, 25 YEARS HERBALIST,2. YAKUBU MOHAMMED 19 YEARS, A FARMER that you on the 24th day of October 2022 at Kparepkare in the Jasikan Circuit in the Oti region of the Republic of Ghana and within the jurisdiction of this court did agree to act together with a common purpose to commit a criminal offence to wit stealing.

COUNT TWO

STATEMENT OF OFFENCE

STEALING: Contrary to section 124(1) of the criminal and other offences Act, 1960, Act 29

PARTICULARS OF OFFENCE

1.SULEY IBRAHIM, 25 YEARS HERBALIST,2. YAKUBU MOHAMMED 19 YEARS, A FARMER that you on the 24th day of October 2022 at Kparepkare in the Jasikan Circuit in the Oti region of the Republic of Ghana and within the jurisdiction of this court did dishonestly appropriate two female cows valued GHS14,000.00 the properties of Alhaji Manu Umaru and Ibrahim Mahama.

THE BRIEF FACTS

The brief facts of the case as attached to the charge written by No.56309 G/Constable Prince Oduro and presented to court by ASP Alhassan Abdul Razak are that the complainants are one Ibrahim Mahama, a Fulani herdsman lies at Kparekpare and Alhaji Manu Umaru a businessman living at Dambai kana.Accused persons Suley Ibrahim,A1 a herbalist lives at Dambai Wankayaw and Yakubu Mohammed A2. A farmer also lives at Kechebi in the Nkwanta West district. The complainants have kraals at Kparekpare where there are Fulani herdsman taking care of the animals. On 25th October 2022 about 6.00am the caretakers of the complainants noticed the missing of one cow each from the two kraals and duly informed the complainants. The first complainant called one of his brothers by name Usmanu who resides at Nkwanta to assists him to locate the culprits. He then proceeded to Nkwanta to enquire about the missing cows. On his way back to Kparekpare he had information that a certain vehicle was seen conveying some cattle from Dambai to Nkwanta and a phone belonging to one of the occupants fell from the vehicle at Kele which they suspect the owner of the phone to be involved in the stealing of the animals. The first complainant took custody of the phone and traced its ownership to A2 who was arrested and

subsequently A1 too was arrested and the two cows retrieved from them. Accused persons were handed over to the Oti regional CID together with the exhibit cows and in their cautioned statements accused persons admitted stealing the cows. Further investigation led to the arrest of the driver, Joku Ernest and Taso Elija who are now witnesses in this case since no evidence was established to implicate them. After investigations A1 and A2 were charged with the offences and now put before the court.

When the accused persons were put before the court and their pleas taken A1, Suley Ibrahim, pleaded guilty simpliciter and he was accordingly dealt with, A2, Yakubu Mohammed, denied the charge and went through full trial.

THE CASE OF PROSECUTION

The prosecution called in all Four (4) witnesses in support of its case, the second complainant Manu Umaru as (PW1), first complainant Ibrahim Mahama as PW2, the driver of the vehicle used in carting the stolen cows, Joku Ernest as PW3 and the investigator of the case as the PW4.

The evidence of PW1, was simply that he had information that his cow has been stolen on October 25, 2022 from his Kraal at Kparekpare and he started making efforts to locate the missing cow. That on October 27, 2022 he had information that the Dambai Police have arrested some suspects with exhibits cows. That he followed up to Dambai and saw his missing cow amongst the exhibit cows and the accused persons. The testimony of PW2, first complainant, was that he visited his Kraal on October 25, 2022 and noticed one of his female cows was missing. That he quickly called his brother by name Osmanu at Nkwanta to be on the lookout for the animal at Nkwanta for him. That on October 26, 2022 he followed up to his brother at Nkwanta to enquire about the missing cow and they had information that a phone belonging to suspects who may have stolen the cows has been found. They then went for the phone and traced ownership of the phone to the second accused person who was in the company of the

first accused person and the two were arrested and sent to the Nkwanta police station. The evidence of the driver, PW3, of the vehicle that was used to cart the animals from the kraals was that the accused persons hired his services at the Nkwanta lorry station for him to cart two cows belonging to them from Kparekpare to Kechebi. The accused persons intimated that the cattle belong them when he PW3 questioned them about the ownership of the animals. That after loading the cattle from Kparekpare and on route to Kechebi and upon reaching Dambai Yabram junction the police had mounted a barrier there. That upon seeing the police the accused persons jumped out of his vehicle and run away leaving him alone in the vehicle. That he was questioned by the police and he was allowed to go and he went to keep the animals with his friend by name Taso Elija at Kele and he went to Nkwanta to continue his work as a driver. That later the Police led by A1 and A2 came to arrest him and he led them to retrieve the animals from his friend at Kele. That his friend Taso, the accused persons and himself were sent to Dambai with the retrieved cows. The evidence of the investigator, PW4, was materially the summary of the testimonies of the first three witnesses. PW4 tendered into evidence Photograph of the retrieved cows as Exhibit A, the mobile phone belonging to A2 as Exhibit B, investigation Cautioned statement of A2 as Exhibit C and the Charge statement of A2 as Exhibit D.

THE CASE OF SECOND ACCUSED

The case of the second accused is that on the October 26, 2022 he came back from his trip to Techiman and by 8am he noticed that all his people had gathered in the house of the assemblyman and he also went there to greet them and informed them he was back from Techiman. That one Tahiru asked him to see him later and he indeed went to see Tahiru who gave him GHS50.00 to be used a transport fare to Dambai. That later he was in his farm when some people who had arrested A1 came to ask him if he knows A1 and he told them he doesn't know A1 and yet he was arrested and sent to Nkwanta. That A1 admitted taking the cattle to Kele and A1 informed them he, A2, knows nothing about the stealing of the cattle. Yet the police took him and A1 to Kele

to arrest a butcher and a driver and they were all sent to Nkwanta police station. That they were all later sent to Dambai regional police headquarters. He told them he knows nothing about the stealing of the cows upon caution. The accused person sought to call two witnesses in the persons of one Tahiru Adamu of Kechebi and Manyikina Tala Yaw, the assemblyman of Kechebi. The two witnesses did not offer any evidence and stated categorically that they know nothing about the case and only heard the case from the police after the arrest of the accused persons.

BURDEN AND STANDARD OF PROOF

Section 14 of the Evidence Act 1975 NRCD 323 places the burden of producing evidence in criminal cases on the prosecution. And the cases have held that there is no burden at all on the accused to prove his or her innocence. All that the accused needs do is to create doubt in the mind of the court as to facts of the prosecution. The case of Donkor Vs. The State (1964) GLR598 SC held that in criminal trials the burden of proof in the sense of the burden of establishing the guilt of the accused is generally on the prosecution. The failure to discharge the burden should lead to the acquittal of the accused. I would want to deal with the substantive offense first.

On the charge of stealing, section 125 of Act 29 1960 defines stealing as 'a person steals who dishonestly appropriates a thing of which that person is not the owner' The Court of Appeal in the case of Ampah.Vs. The Republic(1977) 2GLR171 held that in the case of stealing the prosecution must prove three (3) elements; (i) dishonesty, (ii) appropriation and (iii) property of another person.

This means that the prosecution must first prove that the accused did appropriate the property of another and that the appropriation was dishonest.

The case of the prosecution in our present case as above stated is that the accused person A2, together with his friend ,A1, dishonestly appropriated two female cows belonging to the named complainants. A1 pleaded guilty simpliciter and he was convicted and sentenced. Exhibit A is the photograph of the two cattle that were

allegedly stolen by the accused persons to which A1 admitted. A2 against his denial when his plea was taken had in his investigation cautioned (Exhibit C) and Charge (Exhibit D) statements admitted to stealing the animals with A1. And further stated that in course of transporting the animals from Kparekpare to Nkwanta on reaching a junction the police stopped them and A1 and himself took to their heels and escaped leaving the driver alone in the car. That a group of Konkomba men came to his house and arrested him on October 26, 2022. The same account of the escape of A2 and his friend was given by the driver the third witness of the prosecution who carted the animals from the Kraal. At cross examination on the PW3 by the A2 , A2 actually materially admitted engaging the witness and did not make it known to the witness that the animals were stolen and further confirmed escaping from the vehicle in which the animals were being conveyed. The following ensued between A2 and the PW3.

Q. When I came to you, was I alone or we were two.

A. You were two persons.

Q. Did we come to meet you in your house or on the road?

A. At the lorry station

Q. At what time did we come to you?

A. Around 6pm and we left Nkwanta after 7pm

Q. The time that we were going did you know the cow was a stolen one?

A. No, I personally asked you if the cow was not a stolen one and you answered no.

Q. The time you were arrested by the Police was I in your car.

A. No, when the police stopped, you and your friend fled leaving me alone.

Q. As we run away, I believe you then realized the animals were stolen ones.

A. That is exactly so.

Q. I am putting it to you that I did not ask you to go and cart any cow for me.

A. You did ask me. You engaged me.

A2 further admitted stealing a cow but sought to say not the particular one in Exhibit

A. A2 cross examines the investigator as follows

Q. I put it to you that I did not tell you that I am the one who stole the cow.

A. That is not correct, you admitted stealing the cow.

Q. Did I point the cow I stole to you?

A. Yes you did.

Q. Can you tell the court which of them I pointed at? Point to it in the picture.

A. Yes, the one with spots on it.

Q. That's not the picture of the cow I stole.

A. That is the exact animal.

From the foregoing I find and so hold that the accused has firmly admitted appropriating the cows the property of the complainants without the consent of the owners and therefore the appropriation was dishonest. Accused throughout the trial offered no reasonable explanation or evidence to create any doubt in the case of the prosecution as to the facts on record against him as charged. I therefore find the accused person, A2 guilty on the offence of stealing as charged with his friend A1.

THE CONSPIRACY CHARGE

The first and second accused persons were charged with conspiracy to steal the complainants' cattle. The accused persons have been found guilty of the stealing as charged. Section 24 of Act 29 provides as follows; section 24(1) where two or more persons are convicted of conspiracy for the commission or abetment of criminal offence, each of them shall, where the criminal offence is committed, be punished for

that criminal offence, or shall, where the criminal offence is not committed, be punished as if each had abetted that criminal offence. In our instance case the two accused persons have been convicted as above of the substantive offence of stealing. And from the above provision of section 24(1) of Act 29, the accused persons can only be punished for only the substantive offence of stealing for which they have been convicted even if they are convicted of the conspiracy. It seems to me joining conspiracy to a substantive offence will be safe where not all the conspirators engaged in the commission of the substantive offence. I do not, therefore, find it expedient to consider the charge of conspiracy and same is accordingly struck out and the accused persons discharged on same.

(SGD)

ALFRED KWABENA ASIEDU ESQ

(CIRCUIT JUDGE)