

**IN THE CIRCUIT COURT OF JUSTICE HELD AT DENU ON TUESDAY THE 11<sup>TH</sup> DAY  
OF JULY, 2023 BEFORE HIS HONOUR JOSEPH OFOSU BEHOME, ESQUIRE – CIRCUIT  
COURT JUDGE**

**CC.12/2023**

**THE REPUBLIC**

**VRS:**

**CHUHS NELLY CHUKUDIKE**

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<b>ACCUSED PERSON</b>	<b>.....</b>	<b>... PRESENT.</b>
<b>INSPECTOR ALBERT KOMBOR FOR PROSECUTION</b>		<b>... PRESENT.</b>

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**J U D G M E N T**

The Accused person was charged under Section 124(1) of Act 29/60.

**BRIEF FACTS OF THE CASE**

The brief facts of the case as presented by the Prosecution are that:

Complainant Chinyere Oburun is a trader living at Kasoa in the Central Region and the accused person Chuhs Nelly Chukudike is a driver by profession living at Anabra State Nigeria. Both complainant and the accused are Nigeria nationals and customers to each other. In the month of April, 2022, complainant daughter who resides in Nigeria gave cheese biscuit of 1,678 piece which she packed in sacks amounting to 54 sacks value GH¢117,460.00 to the accused to be delivered to the complainant in Accra. In the month of May, 2022, the accused

delivered 1, 182 packs value GH¢82,740.00 to the complainant and promised to bring the remaining 496 packs value GH¢34,720.00 later. The accused failed to send the goods to the complainant and she contacted him on phone and demanded for the remaining goods. Accused then told complainant that the said goods has been seized by the customs officers. Complainant came to Aflao and asked the accused to lead her to the customs officer who seized the goods for her to render an apology to the officers. However, when complainant and accused went, complainant was told that the goods they seized from the accused were released to him the same day. Complainant then asked the whereabouts of her goods but the accused could not give her any tangible reason. Complainant reported the case to police and the accused was arrested and cautioned. In his investigation caution statement, he admitted the offence and stated that he sold 480 packs of the goods valued GH¢33,600 without the consent of the complainant. After investigations the accused was charged with the offence as stated in the charge sheet.

The accused pleaded not guilty to the charge for which reason the prosecution assumed the burden of proof and must prove the charge against the accused beyond reasonable doubt.

Section 11 (2) of the Evidence Act 1975 NRCD 323 states:

“In a criminal action, the burden of producing evidence when it is on the prosecution as to any fact which is essential to guilt, require the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of the fact beyond a reasonable doubt”

The accused person herein is charged with stealing under Section 124(1) of Act 29/60 which states:

“A person who steals commits a second degree felony”

Section 125 of Act 29/60 defines stealing thus:

“A person steals who dishonestly appropriates a thing of which that person is not the owner.”

In The State v. W.M.Q. Halm and Aryeh Kumi Crim. App Nos. 118/67 and 113/67, 7 August, 1969: (1969) CC155, the Court per Akufo Addo, C.J. Ollennu, Apaloo, Amissah

JJ.A and Archer J stated the three essential ingredients which proves a charge of stealing under our criminal law as:

- “(i) That the person charged must not be the owner of the thing allegedly stolen;
- (ii) That he must have appropriated the thing;
- (iii) That the appropriation must have been dishonest”.

See also Criminal Law of Ghana, P.K. Twumasi, page 20 paragraph 2.

Prosecution has testified that at all material times accused was in possession of complainant’s goods that was carted from Lagos-Nigeria to Accra-Ghana. The quantity carted is said to be 1, 678 pieces of cheese balls and packed to 54 sacks and that valued GH¢117,460.00.

The next ingredient for the prosecution to prove beyond reasonable doubt was whether or not the accused appropriated the thing allegedly stolen.

Section 122 (6) of Act 29/60 defines appropriation as:

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

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) presumed to be innocent until he is proved or has pleaded guilty.

The prosecution in a bid to prove its case called two (2) witnesses.

The testimony of **PW1**, Chinyere Oburun who is the complainant in this case, confirmed the facts as presented by the prosecution supra.

**PW2**, No. D/PW/SGT. Dora Owusu Otema, investigated the case. She relied on her witness statement together with the exhibits attached.

### **THE CASE OF THE DEFENCE**

In opening his defence, accused told the Court that he is a driver by profession and a businessman as well and comes from Anambra state in Nigeria. He continues that, he carries goods from Nigeria bought by his clients in Nigeria to Ghana and from time to time he also, buys goods from Nigeria and comes and sells in Ghana, all depending on the orders that he gets.

Accused gave evidence himself and did not call any witness neither did he tender any exhibit.

The substance of his evidence is that, en route to Ghana, when he got to Benin Republic, the customs officers over charged him and he had no option than to sell some of the complainant's Cheese Balls to off-set that charge though without recourse to the complainant. Accused contends at Aflao border too a quantity of the cheese balls were seized by the customs officials. Accused hereinafter closed his case.

The issue that emerges for determination, is whether or not accused herein, Chuhs Nelly, dishonestly appropriated Chinyere Oburun, the complainant's cheese balls valued GH¢38,600.00.

The following ensued between the Prosecutor and the accused during a cross-examination on 26/06/23.

Q: In paragraph 2 of your witness statement, you stated you are a business man.

Can you tell the Court the business that you do.

A: I carry people's goods and buy same on my own from Nigeria and sell in Accra-specifically drinks and more so it depends on the order I get

from the market.

Q: How long do you know PW1.

A: We started business in 2019.

Q: In Paragraph 6, you said you have been doing business with PW1's daughter can you tell her name.

A: We communicate on the phone and I have never seen her. Anytime she brings goods she calls and I ask riders to meet her and collect the goods.

Q: Can you tell the Court the quantity of cheese ball biscuits that were given to you to be given to PW1.

A: I do not know.

Q: You were also given some money to enable you bring the said goods to Ghana, is that true?

A: Yes.

Q: Can you tell the Court how much you charge to bring the said goods.

A: I do not remember, for it has been some time now.

Q: Would you also agree that you sold some of the Complainant's goods without her knowledge?

A: Yes.

Q: I put it to you that you sold 480 pack of cheese boll biscuits valued GH¢38,600.00 Ghana Cedis.

A: I sold some but not up to the said quantity.

Q: Can you tell the Court the quantity you sold.

A: I do not remember the quantity that I sold.

Q: I put it to you that you are not truthful to the Court.

A: I am sincere with what I am saying.

The Accused person in his caution statement to the police on 18/07/2022 stated the following:

"I am a driver by profession and lives at Anambra State in Nigeria but anytime I come to Ghana, I normally stay at Accra Adabraka. It is true that complainant's daughter who is in Nigeria gave me cheese biscuit 54 sacks and each sack contain 30 packs, and told me to bring same to her mother Chinyere Oburun the complainant in Accra Ghana. After receiving the goods, about three women also gave me some goods to bring same to Ghana. When I reached Benin border, the amount of money the officer demanded from me was huge so I sold 10 sacks of complainant's goods which contains 300 packs which valued 700,000 CFA to pay for the money the officer in Benin demanded. When I got to Aflao border too the officers seized 6 sacks which one sack contains 30 pieces. In all, the quantity of complainant goods I sold without her consent is 480 packs which valued GH¢33,600.00.

The Cautioned Statement (Exhibit "A") was taken in compliance with section 120 of NRCD 323. Exhibit "A" was tendered in evidence without any objection by the Accused person. Akamba JSC in Ekow Russel vrs. The Republic [2016] 102 GMJ 124 SC stated:

*".....A confession is an acknowledgement in express words, by the accused in a criminal charge, of the truth of the main fact charged or of some essential part of it. **By its nature, such statement if voluntarily given by an accused person himself, offers the most reliable piece of evidence upon which to convict the accused.** It is for this reason that safeguards have been put in place to ensure that what is given as a confession is voluntary and of the accused person's own free will without fear, intimidation, coercion, promises or favours..... "* (Emphasis mine).

I rely on the case of The State vs. Sowah and Essel [1961] GLR 743-747, SC., where Crabbe J.SC stated:

*".....In the instant case the defence put forward by the two accused left the judge with three possible positions, namely*

- (1) if he accepted the explanations of the appellants, he must acquit them;
  - (2) short of accepting that explanation, if it left him in doubt, he must also acquit them;
- and

(3) he must be satisfied of the guilt of the appellants of the crimes alleged against them only on consideration of the whole evidence adduced in the case. (See *R.V. Murtagh and Kennedy (1955) 39 Cr. App. R. 72*).

**BY COURT:** On the totality of evidence adduced before me. I am fully satisfied of the guilt of the accused person as I find that the defence put forward by the accused is an afterthought. In the circumstances, I find the accused person herein guilty of the offence of stealing and he is accordingly sentenced.

In sentencing accused, I take into consideration the fact that he has been in custody for a while due to his inability to provide a surety with justification for bail: being a Nigeria. The Court will give him the opportunity to refund the cost of the 480 packs of cheese balls estimated at GH¢33,600.00 stolen.

Chuhs Nelly Chukudike is hereby ordered to pay an amount of GH¢33,600.00 to the complainant: Chinyere Oburun.

(SGD)

**H/H JOSEPH OFOSU BEHOME  
CIRCUIT COURT JUDGE**