

IN THE CIRCUIT COURT "A", TEMA, HELD ON MONDAY, THE 12<sup>TH</sup>  
DAY OF JUNE, 2023, BEFORE HER HONOUR AGNES OPOKU-BARNIEH,  
CIRCUIT COURT JUDGE

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SUIT NO: D4/11/21

THE REPUBLIC

VRS

STEPHEN NARH

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ACCUSED PERSON

PRESENT

C/INSP. AKPEERE FOR PROSECUTION

PRESENT

PRINCE KWEKU HODO, ESQ. FOR THE ACCUSED PERSON PRESENT

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**RULING ON SUBMISSION OF NO CASE**

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**FACTS:**

The accused person was arraigned before this court on 12<sup>th</sup> July, 2021, on a charge of stealing contrary to **Section 124** of the Criminal Offences Act (1960) Act 29.

The brief facts presented by the prosecution are that the complainant, David Angmortey, is a freight forwarder at the Tema Port and the accused person is a driver resident at Ashaiman. The prosecution asserts that on the 24<sup>th</sup> day of February 2021, the complainant cleared a 6"x20" footer container of galvanized stainless-steel pipes from the Tema Port and the goods were loaded on the trucks of the accused person and others to cart them to the warehouse of one Maxwell Asare, the owner of the goods at Taifa, Accra and Kumasi respectively. According to the prosecution, on reaching the warehouse in Taifa, the shop attendant detected that the original MAERSK

Line Seal with number *CN6015259* which was used to lock the container had been replaced with a new *seal number 008073*. The prosecution states further that the accused person after delivering the goods at the Taifa Warehouse, proceeded to Kumasi with the Kumasi bound goods and upon reaching, Maxwell Asare, the owner of the goods detected that there was a shortage of 776 pieces of the products and he queried the accused person about the shortage but he could not offer any tangible explanation. He warned the accused person to return the alleged missing items to his shop. Later, the accused person allegedly returned 599 pieces of the missing items to the warehouse at Taifa but could not account for the remaining 177 pieces valued at GH¢24,000.00.

On 1<sup>st</sup> March, 2021, a complaint was lodged at the Police Station leading to the arrest of the accused person who denied the offence and upon interrogation, he stated that it was his driver's mate, one Amos, who stole the items yet he could not assist the police to locate the said driver's mate to give his version of the events to explain the shortages. It is further alleged that during investigations, the accused person led the police to a yard along the motorway, and showed the police the exact location where the alleged stolen products were kept and a search was conducted in the area but the remaining products could not be traced. However, traces of plastic polythene products used in covering the pipes were seen littered all over the place and these were photographed. Again, the police also retrieved a copy of the waybill from MPS indicating that the seal number on the container the accused person carried from the Port was *CN6015259* which was different from seal number *008073* which was fixed on the container when it arrived at its destination. After investigations, the accused person was subsequently charged with the offence stated on the charge sheet before this honourable court.

## THE PLEA

The accused person who was represented by Counsel pleaded not guilty to the charge after it had been read and explained to him in the Dangbe language. The accused person having pleaded not guilty to the charge, the prosecution assumed the burden to prove the guilt of the accused person beyond reasonable doubt.

The case proceeded to trial and the prosecution called four witnesses and tendered in evidence **Exhibit "A"**- the caution statement of the accused person, **Exhibit "B"**, Photograph of a weedy area, **Exhibit "C"**-Photograph, of the seal place on the container, **Exhibit "D"**- Equipment Interchange report/Waybill, **Exhibit "E"**- photographs of stainless steel pipes, **Exhibit "F"**, charge statement of the accused person. At the close of the case for the prosecution, counsel for the accused submitted that there is no case made out sufficiently to require the accused person to open his defence but failed to file the submission of no case as ordered by the court.

## ANALYSIS

**Section 173** of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30), states that:

*"Where at the close of the evidence in support of the charge, it appears to the Court that a case is not made out against the accused sufficiently to require him to make a defence, the Court shall, as to that particular charge, acquit him."*

In the case of **State v. Ali Kassena (1962) GLR 144-154**, the Supreme Court stated that a submission that there is no case to answer might properly be made and upheld:

(a) when there has been no evidence to prove an essential element in the alleged offence;

(b) when the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict upon it

Regarding the standard of proof at this stage, the Supreme Court in the case of **Tsatsu Tsikata v. The Republic** [2003-2004] 1 SCGLR, 1068, stated that the standard of proof at this stage is a prima facie case and not beyond reasonable doubt since the court has not had the opportunity to hear the defence. What the term “prima facie case” means was stated in the case of the **Republic v. Kwabena Amaning @ Tagor & Anor.**, Criminal Appeal No. 4/2007, delivered on 28<sup>th</sup> November, 2007, the court stated that:

*“The paramount consideration in deciding whether a prima facie case has been made or not is; whether the prosecution has proved all the essential ingredients or prerequisites of the offence charged. No prima facie case is made where the prosecution was unable to prove all the essential ingredients. Even if one of the ingredients is not proved, the prosecution fails and no prima facie case is made.”*

Here, the accused person is charged with stealing contrary to **section 124(1)** of the Criminal Offences Act, 1960(Act 29). Stealing is defined under **section 125** of Act 29 as follows:

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

In the case of **Cobbina v. The Republic** (J3 7 of 2019) [2020] GHASC 4 (19<sup>th</sup> February 2020), the Supreme Court stated that the essential ingredients of the

crime of stealing which the prosecution must prove beyond reasonable doubt, are;

1. The subject matter of the theft must belong to another person.
2. The accused person must appropriate it.
3. The appropriation must be dishonest

Thus, at the submission of no case stage, the prosecution has a duty to establish a prima facie case against the accused person by proving the essential ingredients of the offence charged. To prove that the accused person dishonestly appropriated goods of which he is not the owner, the first prosecution witness, Ebenezer Osei, testified that he works as a store keeper for one Mr Maxwell Asare at Taifa in Accra. According to his testimony, sometime ago, his boss informed him that he was expecting delivery of a container loaded with stainless steel pipes at the shop. Pursuant to that discussion, on 24<sup>th</sup> February, 2020, the container arrived at the shop at Taifa, and he took photographs of the seal number on the container which was 008073 and sent it to his boss who was then in Kumasi. PW1 testified further that after taking the photograph of the seal on the container, he opened the seal in the presence of the driver popularly known as Ofa Atta, took all the stainless-steel pipes PW3 asked him to take and the remaining steel plates were left for the driver to send to the Kumasi branch of the shop. PW1 again testified that after taking his consignment, he checked and realized that there were shortages of pieces in the bundles of the stainless-steel pipes as it did not tally with the figure his boss gave him so he reported the shortages he detected to PW3 who asked him to wait for the Kumasi branch to also off load their consignment for confirmation of the shortage.

PW1 further testified that subsequently, his boss told him that he would report the shortage to the agent to investigate same and it was there that he got to know that the original seal number used in locking the container was CN 6015259 and not the 008073 which was on it when the goods arrived at the shop in Taifa, suggesting that the original seal had been broken and replaced. He testified further that his boss called him two days later around 9:00pm and informed him that the driver, Wofa Atta had brought some pipes to the shop so he should go and check. When he got there, he saw the car parked outside with the pipes loaded in front of the shop without the driver. He called the driver several times but he did not respond. He then called his boss to inform him of the absence of the driver at the shop. He then instructed him to pack the pipes into the shop and go home which he did. PW1 stated that the next morning, when he reported to work at the shop, the truck was no longer there. Later, he was invited to the police station to write his statement about the case which he did.

The second prosecution witness, David Angmortey, the complainant, testified that he is a freight forwarder and on 24<sup>th</sup> February, 2021, he cleared six containers of stainless-steel pipes and steel plate from the MP's terminal at the Tema Port for Maxwell Asare, who instructed him to deliver the goods at his shops located at Taifa in Accra and Kumasi respectfully. According to him, the shipping agent was MAERSK Line and they had used seal No. 6015259 to lock the container. He testified further that on 24<sup>th</sup> February, 2021, the goods were loaded for five different trucks to send to the warehouse of the owner of the goods at Taifa and Kumasi respectively but when the goods got to its destination, the owner called to inform him that the original MAERSK Line seal No. 6015259 had been replaced with a new seal No. 008073. He further testified that the accused person was the driver of one of the said trucks

which was loaded with the goods to be delivered and he off loaded the Accra consignment and proceeded to Kumasi to off load the remaining goods.

PW2 further testified that when the goods arrived at its destination in Kumasi, the owner of the goods, detected shortage of 776 pieces of the stainless-steel pipes which were off loaded at Taifa-Accra and he confronted the accused person but he could not give any tangible reason about the shortage. Thereafter the owner called to inform him about the shortage and the change of seal on the container upon arrival at Taifa. According to PW2, when he confronted the driver of the truck, he admitted and upon his investigations he got to know that it was his driver's mate who stole the items and he returned some of the stolen items to PW3 but there was still a shortage of 177 pieces of stainless-steel pipes valued at GH¢24,000.00. Based on that, he lodged a complaint at the Harbour Police Station and the driver was arrested but he could not also produce his driver's mate who allegedly stole the pipes.

The third prosecution witness, Maxwell Asare testified that he is a businessman and lives at Kwadaso, Kumasi. On 21<sup>st</sup> February, 2021, he imported stainless steel pipes and steel plates to the Tema Port and engaged PW2 who is a clearing agent to clear the goods for him and transfer it to Taifa , Accra and Kumasi respectively. When the goods got to his shop at Taifa, his shop attendant, PW1, took a photograph of the seal on the container and sent it to him and also complained that the goods were not up to the quantity he was supposed to have received. PW3 further testified that the accused person brought the remaining consignment meant for Kumasi to him the next day after discharging the Taifa consignment and he called PW2 to confirm the seal

number given to him by his shop attendant and he also confirmed that the seal number had been changed before getting to the Taifa shop because that was not the original seal from *MEARSK Line*. He confronted the accused person and he returned 599 pieces of the alleged stolen items to his shop at Taifa but there was still shortage of 177 pieces valued at GH¢24,000. He later called his agent to report the theft for the police to get him arrested based on which the accused person was arrested. PW2 stated that later, he gave his statement to the police.

The fourth prosecution witness, the investigator, C/Insp Daniel Dadzie testified that he is a detective stationed at the Marine Ports and Railways Department, Tema and he knows the accused person and the complainant, PW2. That on 1<sup>st</sup> March, 2021 the complainant, PW2, reported at the Marine Ports and Railways Department –Tema that on 24<sup>th</sup> February, 2021 he cleared 6x20 footer containers of galvanized stainless-steel pipes from the Tema harbour and loaded them on the truck of the accused person and others to cart them to the warehouse of PW3, the owner of the goods, in Taifa and Kumasi. And that when the accused person took his goods to the destinations at Taifa and Kumasi it was detected by the owner, PW3, that there was shortage of 776 pieces and the accused person later returned 599 pieces to the Taifa shop of the owner but failed to account for the remaining 177 pieces valued at GH¢24,000.00.

PW4 further testified that the case was referred to him for investigations and he obtained statements from the prosecution witnesses and the accused person in his caution statement admitted and marked as **Exhibit "A"**, denied the offence but stated that when he exited the port, he was tired so he went



home and handed over the load in his truck to his mate, Amos to offload the Taifa bound goods and that it was his mate who stole allegedly stole the products. However, the accused person could not give any tangible information about the whereabouts of the so-called mate of his as he stated that he does not know his place of abode but only met him at the port some few months before the incident and started working with him.

PW4 further states that on 29<sup>th</sup> March, 2021 the accused person led him to a yard along the motorway and pointed to the police the exact location where the products were kept and after a thorough search was conducted in the area the remaining products could not be traced. However, traces of plastic polythene products used in covering the pipes were seen littered all over the scene and they were photographed and marked as **Exhibit "B"**. PW2, furnished the police with a photograph of the alleged fake seal number 008073 which was used by the accused to lock the container when it arrived at the Taifa shop of PW3, admitted and marked **Exhibit "C"**. Also, a photograph copy of the waybill from MPS indicating the seal number on the container the accused person carried from the port which was CN6015259, was marked as **Exhibit "D"**. PW4, the investigator, further testified that the shop attendant, PW1, sent him photographs of the alleged stolen pipes which was brought to the Taifa shop by the accused person, same was retained and marked as **Exhibit "E"**. He also tendered in evidence the charge statement of the accused person admitted and marked as **Exhibit "F"**.

The evidence led by the prosecution shows that the accused person is not the owner of the goods in question. The evidence also shows that the accused person was the driver in charge of the truck when the goods were offloaded

at the Taifa warehouse where, it was detected that the original seal had been broken and some quantities missing. It is the contention of the prosecution that it is the accused person who appropriated the goods. From the account of PW1 and PW3, the accused person subsequently returned some of the goods appropriated. PW4, in his testimony before the court states that the accused person mentioned one Amos, his driver's mate as the one who allegedly appropriated the goods when he asked him to deliver the goods at the Taifa warehouse. This statement is also contained in **Exhibit "A"**, the caution statement of the accused person. The evidence led by the prosecution also shows that some of the goods have been retrieved through the instrumentality of the accused person who led the police to where the stolen goods were kept. It cannot also be said that the evidence led by the prosecution has been so discredited as a result of cross-examination or that it is so manifestly unreliable that no reasonable court can safely convict upon it.

In the considered opinion of the court, based on the evidence led, a prima facie case is sufficiently made out to warrant calling upon the accused person to open his defence to give his side of the story. The submission of no case is accordingly dismissed. The accused person shall prepare to open his defence to raise a reasonable doubt in the case of the prosecution in accordance with **section 174** of the Criminal and Other Offences (Procedure ) Act, 1960(Act 30).

**H/H AGNES OPOKU-BARNIEH**  
**(CIRCUIT COURT JUDGE)**