

IN THE CIRCUIT COURT HELD AT CAPE COAST ON TUESDAY THE 31<sup>ST</sup> DAY  
OF JANUARY, 2023 BEFORE HER HONOUR VERONIQUE PRABA TETTEH  
(MRS.), CIRCUIT JUDGE

---

253/2022

THE REPUBLIC  
VRS  
NELSON DOMPREH

---

*CHIEF INSPECTOR CHRISTIANA SAMPONG FOR PROSECUTION*

*DANIEL AMOSA FOR ACCUSED*

## JUDGMENT

Nelson Dompseh is charged with stealing cash of GH¢48,270 being the property of HOB Capital Microfinance Ltd. The accused was employed as a mobile banker and his duties included as a mobile banker was to go and collect deposits from the company's customers, record the transaction in their passbooks and then deposit it into their individual accounts upon returning to the office. It is the prosecution's case that, the accused would collect the money from the customers, make the entries in their passbooks so they would believe the money had been deposited. But he did not deposit the money in their accounts and instead used it for his own purposes. This theft was only discovered when he confessed to prosecution's first witness and after a thorough audit was conducted, it revealed that he had kept GH¢48,270 belonging to the bank

The accused denied the offence of stealing and insisted he was innocent of the charges. He also denied that he had confessed to the crime willingly and claimed that he was coerced into making a confession of stealing and this was in respect of the statements he made to police. He challenged the court proceedings, claiming that he had already been tried and convicted by the court in Accra for stealing and thus

the prosecution was estopped from retrying him as it amounted to *autrefois convict* and thus a breach of his human rights enshrined under the 1992 constitution. I will first deal with the accused's objection to the proceedings on the grounds of *autrefois convict*.

### **Autrefois Convict**

Counsel for the accused, in his address and during the trial, raised the issue of *autrefois convict* and prayed the court to dismiss prosecution's case on that ground. He insisted that the accused person had already been tried and convicted for stealing from the complainant and should not be made to go through another trial. Reference was made to several decided cases as well as the 1992 constitution.

Article 19(7) of the 1992 constitution provides that

*(7) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted, shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for the offence, except on the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.*

In *Republic v General Court Martial; Ex parte Mensah* (1972) 2 GLR 154 CA, the court of appeal held that

*"The plea of autrefois convict was applicable where the defendant has been previously convicted on a charge for the same offence as that in respect of which he had been arraigned; the plea was applicable not only to the offence actually charged in the first indictment, but to any offence to which he could have been properly convicted on the trial of the first indictment."*

The second part of this holding states that the rule of *autrefois convict* also applies to any offence that he could have been tried and convicted in the earlier trial where he was convicted. Such that the second offence must arise from the same facts used to convict the accused person. The witnesses must be the same as well. Where the facts are completely different it stands to reason that, a conviction would not be assured

as this dictum refers to. This court did not have the privilege of studying the proceedings or judgment delivered in the earlier trial as neither the prosecution nor accused person tendered it into evidence. The court was therefore handicapped as to the exact facts and charge under which the accused was earlier tried and convicted.

The fact that that offence was committed in Accra, I find is sufficient reason to assume that the facts relied on in that case were different and that they are different offences arising from different facts. I do not find therefore that the accused could have been convicted in that earlier case for the offence for which he is standing trial today. I believe counsel is operating under the misapprehension that the two offences could have been placed on the same charge sheet. While I believe that could have been so, I do not find that prosecution's failure to charge him with two different offences which took place at different times and in two different regions on the same charge sheet amounts to autrefois convict within the meaning of the 1992 constitution.

### **Charge of Stealing**

The prosecution in discharging its burden of proof called five witnesses in total, the CEO of the complainant who is also the complainant, the current branch manager of the Assin Praso bank, two customers of the company and the police investigator. All the witnesses claim the accused admitted to taking the monies of customers he was supposed to have deposited. The first witness, the company's CEO claims accused confessed on his own to her in 2020 that he had taken GHC15,000 of customers' money after she informed the staff; an audit was going to be conducted into the company's accounts.

The second witness also testified that prior to his taking over as branch manager at Assin Praso, he was made aware of the accused's admission of embezzlement. He thus caused an audit to be conducted which revealed the total amount of GHC48,270 as the money embezzled by the accused. These two witnesses were cross examined by the accused's counsel and their credibility as well as the credibility of their evidence tested. In my opinion, the cross examination which mostly focused on the

accused's earlier trial and conviction in Accra for a similar offence did not discredit their testimony.

The next set of witnesses was two customers of HOB and whose personal mobile banker had been the accused. They dealt directly with the accused and it was only after the thefts had been discovered that they realized they were also victims of the accused person. The monies they had thought would be standing in their account had in fact been taken by the accused and never been deposited. I found them to be credible witnesses and their evidence reliable.

The final witness was the investigator who tendered the documentary evidence relied on by prosecution. I will briefly discuss these documents. In Exhibit A and B tendered by police, the accused makes some admissions to incurring losses to the tune of GHC31,000 belonging to customers. In one breath, he admits taking the monies of customers and in another breath claims the money was rather a loan that he was given and guaranteed with his father's cocoa farm. He admits that he was to have repaid the GHC31,000 back to the company. It is clear that these statements cannot be relied on as conclusive guilt of the accused person due to the accused persons' inconsistency.

The prosecution did not rely solely on these statements but tendered other documentary evidence. Exhibit C is a photocopy of a hand written document with the names of people and figures written alongside. According to prosecution, the names are those of customers of the bank and the figures written by their names are their monies collected by the accused that he failed to deposit into their accounts. When calculated, the total of the monies in Exhibit C is GHC31,560 and this figure is written on the last page. The prosecution also relied on the audit report, marked as Exhibit 2, which states that a further figure of GHC16,710 was discovered which brought the total amount to GHC48,270, the figure stated in the charge sheet.

The next exhibit is a document titled 'undertaken' signed by the accused on the 15<sup>th</sup> of August 2020. In the undertaking, the accused admits to defrauding customers by suppressing money totalling GHC31,560 and he promises to pay that money back.

In the accused person's defence he denies stealing the amount stated by prosecution. He claims, the previous CEO of the company had used the company's money to fund his private business and that the theft discovered after the CEO's death, was attributable to him. He claims as well that, he was coerced into admitting that he had stolen money from the complainant and that in any case he had already been tried by a court of law and should not be retried by the company. I have already addressed the issue of *autrefois convict*.

The accused did not call any witness but relied on his own evidence and two documents. The first exhibit is the audit report tendered through the police investigator during his cross examination already mentioned. The second document is the bank statement of accused at HOB Capital Microfinance from 15<sup>th</sup> May 2020 and ending 21<sup>st</sup> May 2021, a period of a year and one week. The reason for tendering this particular piece of document is to show that the company had made deductions from his account in furtherance of repaying the debt to the company. Each debit or credit activity is described in this bank statement, marked as Exhibit 2. The first deduction from the accused's account was made on the 30<sup>th</sup> of July 2020, the description of the debit activity is: "amt recv frm A cus by Nelson not dep but now paid" this was the amount of GHC5,000. I believe the longer version of this description is 'amount received from a customer by Nelson not deposited but now paid'. The next such withdrawal was the amount of GHC80 and had the same description. Many more of these debit transactions are seen in the account statement with the last such amount deducted on the 7<sup>th</sup> of May 2021.

It is clear from this statement that more than GHC44,000 was deducted from the accused's account by the HOB capital to be refunded to the affected customers. A rough calculation of the payments shows deduction of GHC44,539 as at May 2021. Interestingly, included in this long list of customers is the name of the third witness of prosecution, Otise Kwame Boakye. There are about 4 entries in the account statement that his name appears. Of particular relevance to me are the entries made on the 15<sup>th</sup> and 30<sup>th</sup> of April 2021. These are debit transactions of GHC3000 and GHC500 respectively and both are described as "AMT REC FROM OTISE KWAME

B. BY NELSON NOT DEPOSIT". The names of some customers mentioned in the Audit Report as having their monies suppressed by accused, can also be found with similar description as that of Otise Kwame Boakye; that the monies were deducted as monies not paid by the accused person into their accounts.

It is also clear looking at the transactions on 15<sup>th</sup> and 18<sup>th</sup> September, 2020 that one Daniel Dompseh, a relative of the accused took a loan from the complainant and the amount was transferred to the accused's account and used to pay off the affected customers of the accused. This is because as soon as the account was credited with the loans, the debit transactions began, on that very date. Thus, even though the accused denies the taking monies from customers and not depositing them, this exhibit clearly shows that it is true. This evidence shows that that the losses incurred as a result of the accused's stealing were repaid through a loan. I do not find that the said loss was given to accused as loan, rather it was his relative who took out a loan for accused to refund the money.

The accused seeks to back track from his statements given to police and the management of HOB capital and claims he was coerced into admitting to stealing. He has however failed to establish that coercion in my opinion. There is no evidence that shows the police investigator acted improperly while he took his statement. Accused concedes the statement was taken at the Ankaful prison and there were people in the office at the time. Merely stating there was coercion involved is insufficient proof of the fact.

The fact also remains that, it is not only the police investigator and the first prosecution witness who claim that the accused admitted to stealing. The two other customers of his who also testified alleged that accused admitted to them that he had not deposited their monies in their accounts. In their case, the accused denies making such admissions but does not make any claim of coercion. I am not convinced that any such coercion took place.

The ingredients of the offence of stealing are accurately stated in the case of *Ampah v The Republic* [1977] 2 GLR 171, it was held that

“to establish the offence of stealing as defined by section 125 of Act 29, the prosecution was required to prove the following elements: (i) dishonesty; (ii) appropriation; and (iii) Property belonging to another person.”

I find that accused collected monies from customers of the bank to be deposited in their accounts but he failed to do so. Instead of depositing the monies, he deprived both the customers and the bank, the lawful custodian of those monies of the usage of the monies. These monies did not belong to the accused person but he dishonestly kept them for himself until he was forced to pay it back. Looking at the number of customers and the amount involved, I find it difficult to come to the conclusion that these were mistakes made by him and I find that it was done deliberately.

I find that over GHC44,000 was retrieved from the accused to be paid to these customers and that not all of them have received their monies including the third witness of prosecution. The accused thus dishonestly appropriated monies as he is charged with. I find him guilty of the offence of stealing and do not find his explanation to be plausible. Having heard from the accused’s counsel and the prosecution on a plea of mitigation for the accused, he is sentenced to spend two years in prison custody and also to pay a fine of 200 penalty units or in default spend a year in prison custody. This is because the accused occupied a position of trust and breached that trust countless times for his personal gain.

**(SGD)**

**H/H VERONIQUE PRABA TETTEH (MRS)**

**(CIRCUIT JUDGE)**