

IN THE CIRCUIT COURT SITTING HELD AT AGONA SWEDRU

ON. FRIDAY THE 17 TH DAY OF FEBRUARY 2023,

BEFORE HIS HONOUR JONATHAN D. NUNOO ESQ

CC NO 17/23

THE REPUBLIC

VRS.

ABDULAI AMADU

### **JUDGMENT**

The accused person was charged with stealing contrary to Section 124 (1) of the Criminal Offence Act 29/60 (Act 29)

The Particulars of the offence are as follows:- Abdulai Amadu : Age 447 years , Herdsman: For that you in the month of May 2022 at Agona Swedru in the Central Region and within the jurisdiction of this court, did dishonestly appropriated 13 cattle valued GHc78,000.00 , the property of Simon Ankapong

The accused person pleaded not guilty

Brief facts of the case are the complainant Simon Ankapong lives at Dunkwa Offin. The Accused person lives at Nyamedan a suburb of Agona Swedru. In the year 2020, the complainant father late Mr Simon gave 15 cattle valued 90,000.00 to the Accused person to take care of them at Nyamedan a section of Agona Swedru. In the year 2021, the owner Mr Simon passed on and the complainant together with the family members came and

took two cattle for the funeral activities. After the funeral the deceased successor one Nana Acquah Manu also a witness in this case together with other family members including the complainant came to Nyamedan and saw the thirteen cattle inside the kraal. The family informed the accused person of their intention to sell the thirteen cattle of which the accused promised to give them a buyer from Kasoa who will buy the said thirteen cattle in bulk. During the month of May 2022, the complainant came to Nyamedan and found out that, the thirteen cattle were not inside the kraal. He contacted the accused person but his mobile phone was inactive. That several attempt make to get in touch with the accused proved futile. A report was made to the Police, Agona Swedru and investigation was commenced into the matter .Accused person was subsequently arrested for investigation. In his investigation caution statement, he admitted the offence but failed to lead police to arrest the dishonestly receivers. After investigation, accused was charged and put before this honorable court. (Sic)

Prosecution called three witnesses and tendered three exhibits, caution statement, photograph of Accused and charge statement.

Accused testified without calling any witness

The gist of prosecution case is that the Accused is a herdsman and he was given 15 cows to take care of for the complainant's father and when the complainant's father passed the family members came for two cows from the Accused for the funeral rites and after the funeral rites, Pw1 came and saw the remaining 13 cows in their kraal and they told the accused of their intention to sell the cows and accused promised to get them a buyer who will buy all the cows in bulk. According to Pw1 when he later came to Nyamedan where accused live he did not find the cows and all efforts to get in touch with the accused proved abortive

The accused person admitted all that 1<sup>st</sup> and 2<sup>nd</sup> prosecution witnesses told the court and when he testified but when he cross examined Pw3 he sought to alleged that four of the cows died on one breath and on another breath if I understood him he alleged that all the cows died but his failure to inform the complainant and his family made him to admit that he sold the cows.

In criminal cases the standard of Proof is proof beyond reasonable doubt and the burden of proof is cast on the prosecution throughout the trial. There is no burden on the accused to prove his innocence. It is only sufficient for him to raise a doubt which must not be a fanciful doubt but real doubt. See: **WOOLMINGTON V DPP (1935) AC 462**

**Section 10 of the Evidence Decree NRCD 323 defines Burden of Persuasion as**

(1) .... the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court.

(2) The burden of persuasion may require a party to raise a reasonable doubt concerning the existence or non-existence of a fact or that he establish the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.

**Section 11 same Act defines Burden of Producing Evidence.**

(1) For the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue.

Section 11 (2) provides that, In a criminal action the burden of producing evidence, when it is on the prosecution as to any fact which is essential to guilt, requires 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.

(3) In a criminal action the burden of producing evidence, when it is on the accused as to any fact the converse of which is essential to guilt, requires the accused to produce sufficient evidence so that on all the evidence a reasonable mind could have a reasonable doubt as to guilt.

**Section 13** (1) of the Act states that in any civil or criminal action the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt.

(2) Except as provided in section 15 (3), in a criminal action the burden of persuasion, when it is on the accused as to any fact the converse of which is essential to guilt, requires only that the accused raise a reasonable doubt as to guilt.

**Section 14 is Allocation of Burden of Persuasion and states that:**

Except as otherwise provided by law, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting..

**Section 15 provides for Burden of Persuasion in Particular Cases.**

(1) Unless and until it is shifted, the party claiming that a person is guilty of crime or wrongdoing has the burden of persuasion on that issue.

Proof beyond reasonable doubt has been explained by Lord Denning as follows:

“ it (the proof) need not reach certainty. But it must carry high degree of probabilities **.Proof beyond reasonable doubt does not mean proof**

**beyond shadow of doubt ...if the evidence is strong against the man as to leave only a remote possibility in his favour which can be dismissed with the sentence, 'of course it is possible, not in the least probable' the case is proved beyond reasonable doubt, but nothing short of that will suffice".**

See: **MILLER V MINISTER OF PENSIONS (1947)2 ALL ER 372**

The settled rule of law is that the prosecution must establish the guilt of the accused and that must be beyond reasonable doubt. If there should be any reasonable doubt (real doubt not fanciful as stated above) it shall inure to the benefit of the accused.

#### **Issue for determination.**

Whether or not the accused person stole the cattle?

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

The crucial issue is whether the appropriation was dishonest which depended on the state of mind of the person doing the act amounting to appropriation. Whether an accused person had a particular state of mind was essentially a question of fact which had to be decided by the trial court. The offence of stealing is created by section 124 of the Criminal Code, 1960 (Act 29), and in section 125 "stealing" is defined as follows: "A person steals if he dishonestly appropriates a thing of which he is not the owner."

Therefore, to establish the offence the prosecution is required to prove only the three elements: (i) dishonesty; (ii) appropriation; and (iii) property belonging to another person: See **AMPAH v. THE REPUBLIC [1976] 1 G.L.R. 403.**

In the opinion of this court it is the statute creating and defining the offence that determines the ingredients of the offence which are to be proved. This court agrees with the observations of Abban J. in *Ampah v. The Republic* (supra) at p. 412 that: "If these three essential elements are proved to the satisfaction of the court, the court will be bound to convict unless the accused is able to put forward some defence or explanation which 'can cast a reasonable doubt' on the case for the prosecution."

The crucial issue in this case was whether the appropriation was dishonest. That an appropriation is dishonest may be proved in a number of ways. Thus it is explained in section 120 (1) of the Criminal Code that an appropriation of a thing could be deemed to be dishonest if it is proved that the appropriation was made:

(i) with intent to defraud; or

(ii) by a person without any claim of right; and

(iii) with a knowledge or belief that the appropriation was without the consent of some person for whom he was a trustee or who was the owner of the property appropriated;  
or

(iv) that if the appropriation was known to the trustee or owner of the property, it would be practically objected to.

Subsection (2) of section 120 further provides that:

"It is not necessary, in order to constitute a dishonest appropriation of a thing, that the accused person should know who is the owner of the thing, but it suffices if he has reason to know or believe that some other person, whether certain or uncertain, is interested therein or entitled thereto, whether as owner in his own right, or by operation of law, or in any other manner; and any person so interested in or entitled to a thing is an owner

thereof for all the purposes of the provisions of this Code relating to criminal misappropriations and frauds."

Dishonesty in section 124 relates to a state of mind of the person who does the act which amounts to appropriation.

Whether an accused person has a particular state of mind is essentially a question of fact which has to be decided by the jury on a trial on indictment, or by the circuit judge or magistrate in summary proceedings: see *R. v. Feely* [1973] Q.B. 530, C.A. "The whole test of dishonesty is the mental element of belief": *R. v. Turner (No. 2)* [1971] 2 All E.R. 441 at p. 443, C.A. When one looks at the mental state of the accused person, one looks at it in the light of what he intended or what he believed. It is in each case a question of fact for the court.

If this court may adopt the words in *Kat v. Diment* [1951] 1 K.B. 34 at p.43, D.C.: "The presence or absence of an intent to defraud is a question of fact, . . . to determine that question it is necessary to define the words 'intent to defraud' and then to ascertain whether the facts come within that definition." In our Criminal Code "an intent to defraud" means an intent to cause by means of forgery, falsification or other unlawful act, any gain capable of being measured in money, or the possibility of any such gain, to any person at the expense or to the loss of any other person: see section 16 of the Criminal Code, 1960 (Act 29).

If the court is satisfied that there was no intent to defraud by the accused person, or that he genuinely believed that (a) he had in law the right to appropriate the thing on behalf of himself or a third person, or (b) he had the consent of the owner, or (c) he would have the other's consent if the other knew of the appropriation and the circumstances, then the accused is entitled to be acquitted. Where, therefore, the accused person gives evidence

that he had such a belief, the onus is on the prosecution to prove beyond reasonable doubt that he did not so believe.

The evidence against the accused was that he was given 15 cattle to take care of and two was taken away by the family members of the owner for his funeral and left the 13 cattle in the care of the Accused and the family decided to sell the remaining 13 cows and the Accused promised to get them a buyer who will buy all the cattle in bulk but later they could not find the cattle and the accused was o where to be found and he could not be reached on his phone so a report was made and he was arrested.

The accused person admitted all that 1<sup>st</sup> and 2<sup>nd</sup> prosecution witnesses told the court and when he testified but when he cross examined Pw3 he sought to alleged that four of the cows died on one breath and on another breath if I understood him he alleged that all the cows died but his failure to inform the complainant and his family made him to admit the selling of the cows.

The question is why must the accused person sell the cattle without informing the owner?

We shall see whether the Accused person has any defence.

In fact from the totality of the evidence adduced, it is my respectful view that the Accused should have pleaded guilty simpliciter but it is his right to put up a defence and the court must here him and evaluate his defence however weird it may be.

The Accused did not say he was going to sell the cattle on behalf of the owners and the owners did not agree with Accused to sell the cattle on their behalf. All the accused told the owner(s) when they evinced their intention to sell the cattle was that he was going to find them a buyer who will buy the cattle in bulk but rather sold the cattle at the blind side of the owners.



When the accused open his defence this is what he said "What the prosecution has stated in court through the witnesses are all true. All I have to say is to plead with the court that is all I have to say I am only begging the court. That is the end of my evidence in chief."

In his caution statement to the police this was what he said in the presence of an independent witness

"I am a farmer resident of Nyamedan in the Agona West Municipality. I know the complainant in this case through the father by name "Sofu". About two years ago the said Sofu gave me 15 cattles to take care of them for him. That I started taking care of them and in the process the Sofu passed on. The complainant came in for two cattles for the father funeral leaving 13 cattle in... the kraal. I also started selling the remaining cattles to different buyers which I (can't identified them) do not know their names and I can't also identified them. I want to state that I sold the cattle without the knowledge of the complainant nor, the family. I sold them because of hardship I was facing. I want to add that four cattle died in the kraal. That I sold the cattle one after the other I but not at once. I want to state categorically that the price of the cattle I sold ranged from cash of GHc 650 to Ghc750."

Pw3 further evidence was that three cows out of the thirteen delivered s and they gave the Accused one adult cow and a calf.

After the evidence of Pw1 (Investigator) Accused said he has no question for him meaning he admitted all that Pw1 told the court and when the court explained the essence of cross examining Pw1, Accused insisted he has no questions for him.

When Pw2 ( brother of the deceased who originally owns the cows) also testified, the Accused said all that Pw2 has said is true and that the cattle numbered 13 and Pw2 called him and he went to Dunkwa .

The court reminded the Accused of the allegation against him that he has sold thirteen cows which are not his and the need to cross examine the witness but the response of the Accused was that all that Pw2 has said is true.

Then when Pw3 (son of the deceased owner of the cows) testified, Accused now found his voice and cross examined Pw3 trying to suggest that some or all the cattle died if I understood his questions well putting up a new case all together.

This was the evidence adduced from the cross examination of Pw3

Q. The cattle were fifteen the witness father and I went to buy the cattle and brought them to Agona Swedru. We brought the cattle from the North. They came for two (2) and left 13 cows. I traveled and some of the cows died, what I did wrong was that when the cows died I did not call to inform you about the death of the cows, I suggest that to you

A. What you are saying is not true none of the cows died if some of the cows died he could have called us to inform us about it.

Q. What I failed to do was to have informed you that some of the cattle has died but because I did not inform you when you came to ask of the cows, I have to admit that I have sold them, because I did not inform you that was the reason I said I sold the cows because I did not tell you some of the animals has died, I suggest that to you?

A. what you are saying is not true.

Q. If you say what I am saying is not true can you show the one I sold all the cows to?

A. Your son who takes the animals out to graze, he is called Haruna and your wife Ayisha.. Haruna told us you (the Accused) has not sold the cattle but he has hidden them. The Accused also told us that he sold one cow at GHc750 .00 and that he sold all of them so if any of the animals has died he would have told us. We invited the Accused to Dunkwa for us to have a discussion about the animals, when he came he did not tell us any of the cows died. What he said was that three of the animals have delivered so if he is saying that some of the cattle died that cannot be true.

Q. I did not tell you that all, some of the cows has died that was why I admitted that I have sold all the 13 cows, I suggest that to you?

A. That is not true we know you have not sold the cows and none of the cows have died but you have hidden them.

Q. You are saying I have not sold the cows but I have rather hidden them, can the person who told you I have hidden the cattle show you where I have hidden the cattle?

A. The person did not show us where you have hidden the cattle, the reason why we did not believe the accused has sold the cattle is one cow is sold for Ghc7000.00 and you are telling us you sold the each cow for GHic750.00 is what baffles me.

Q I suggest to you that I travelled and some of them died whilst I was away so when I came I sold the rest about four of the cattle died and I sold the rest

A. What the Accused is saying is not true, we do not live in Agona Swedru we live in Dunkwaw, so if the Accused wife and children would have taken us to where the accused buried the four cows.

This pieces of evidence regarding some of cows dying does not wash though the Accused said so in his caution statement. If the Accused truly believes that four of the cows died

he should have put it to the other witnesses who testified before Pw3 but he failed to do so and even when he testified he did not tell the court any of the cows died.

That piece of evidence for me is an afterthought and I say so because not only is the accused alleging that four cattle died but from the above evidence elicited under cross examination, I see an attempt being made by the Accused to the effect that he admitted selling all the cows as a result of his failure to inform the complainant and his family about the death some of the cows if not all the cows.

The evidence also in my view suggests that four of the cows died but he did not sell all the remaining cows but he simply admitted selling the remaining cows because he did not inform the complainant and his family that some of the cows had died.

I cannot believe this and I will want to know why he has to admit selling the remaining cows if four out of the thirteen cows were no more. Is the Accused unaware that if he admits selling the remaining cows he will be called upon to produce them or he thought he will be allowed to go scot free?

Assuming that four of the cows died and he did not sell the remaining 9 cows (since he was asking Pw3 to show him whom he sold the remaining cows to) when he is the one looking after the cows and they are nowhere to be found, who should be asked of the where about of the remaining cattle?

The Accused said the cattle were fifteen the witness father and him went to buy the cattle and brought them to Agona Swedru. They brought the cattle from the North. Pw3 and his family came for two (2) and left 13 cows. He traveled and some of the cows died. According to him what he did wrong was that when the cows died he did not call to inform Pw3 and family about the death of the cows,

The question is if the Accused had travelled and cows died whilst he was away who told him the four cows had died and what happen to their carcass?

Or when he came back from his journey he came to meet the carcasses of the four cows and if he came to meet the carcasses of the four cows what did he do with?

Why did he fail to inform the family that four the cows were dead when he met with them at Dunkwa but rather told them three of the cows has delivered.

The Accused failed to call any witness to tell the court that four out of the thirteen cattle died he did not tell the court why he did not call any witness.

If the Accused travelled then he must have left the cows in the care of another person.

There is incontrovertible evidence that the son of the Accused by name Haruna is the one who sends the animals out to graze and the Accused is married to one Ayisha so who told the Accused about the death of the cattle? Haruna or Aysha?

I have demonstrated above the Accused himself has admitted selling the cattle without the knowledge of the owners and whether some of the cows died does not exculpate the Accused.

Further if any of the cows died and he did not inform the complainant and his family (as asked already), why should that be a reason for admitting that he sold the cows?

If he did not sell the cows he should not have told police that he did and he should not have admitted the evidence of Pw1 and Pw2 in court only to turn round to dispute the same or similar evidence given by Pw3.

The evidence rather shows what the Accused is made of, he has taken advantage of the fact that the owner of the cows has passed and has disposed of the rest of the cows in his care without informing the owners.

In the opinion of this court, the facts disclosed that the conduct of the accused is entirely inconsistent with the conduct of an owner who would consent to the appropriation of his property.

These facts, on the contrary, show in no uncertain terms that if PW2 and Pw3 had known of the appropriation by the accused they would have protested.

Indeed, the method used by the accused was calculated to conceal his fraudulent enterprise from PW2 and Pw3.

The court observation is that the ingredients of the offence and on the facts there could be no doubt whatsoever that the prosecution has led abundant evidence in respect of the three elements of the offence as defined in section 125 of Act 29.

He dishonestly appropriated the cows which belonged to another and this amounts to stealing.

The evidence of an intent to steal in the accused was both clear and overwhelming, and I accordingly convict the accused of stealing.

I have taken the plea of leniency of the accused into account but the Accused is to be punished severely to serve as a deterrent to him and likeminded persons.

The Accused has deprived the complainant and his family of good thirteen cows and has squandered the proceeds from his nefarious activity and has wasted the precious time of prosecution and court.

The Accused is sentenced to serve (8) eight years imprisonment in hard labour.

(SGD)

H/H JONATHAN D. NUNOO ESQ.

CIRCUIT JUDGE