

IN THE CIRCUIT COURT '1', ADENTAN, ACCRA, BEFORE HER HONOUR JUDGE DORA G. A. INKUMSAH ESHUN (MRS.), SITTING ON FRIDAY THE 3RD DAY OF FEBRUARY 2023

SUIT NO: D1/37/2021

THE REPUBLIC

V.

1. JAMES AKWASI LAAR

2. AARON NANA TWENEBOAH

VERDICT

The first accused person, a 29 year old electrician and the second accused person, a 35 year-old IT technician and woodworker, were arraigned on 3rd June 2021 on charges of conspiracy to commit stealing contrary to **sections 23(1) and 124(1) of the Criminal and Other Offences Act, 1960 (Act 29)**, unlawful entry into the Executive Director's office at the Hill View Guest Centre (HVGC), contrary to **section 152 of Act 29** and stealing various amounts of money, a safe, wallet, passports and cheque books belonging to HVGC and it's Executive Director, contrary to **section 124(1) of Act 29**. The second accused person was also charged with causing unlawful damage to a safe belonging to HVGC contrary to **section 172(1) of Act 29**. The accused persons were first arraigned under charge sheet number **D1/25/2021** which was withdrawn and substituted with charge sheet number **D1/37/2021** by the prosecution on June 3, 2021.

The accused persons pleaded "*not guilty*" to all the charges and were granted bail in the amount of GH¢180,000 with three sureties to be justified for each accused person. They were ordered to report to the investigator twice a week at the Kuottam Estate Police Station in the Ayi-Mensah District. The investigator submitted that GH¢205,910 out of the money stolen was recovered and returned to the complainants. A submission by accused counsel to review the bail terms was denied, considering the circumstances of the case.

According to the brief facts, the complainant is the General Manager of the Hill View Guest Centre at Teiman. The first accused person, who is 29 years old, is a worker at the facility while the second accused person, a 35-year-old, is a former worker. On 15th May

2021 at about 9am, the complainant came to work and detected that the uninstalled safe in the office of the Executive Director, Alejandro Ramiro Viera, was stolen along with the following items:

- a) US\$2,240,
- b) €9,176,
- c) GH¢310,000,
- d) four cheque books belonging to the facility,
- e) a wallet containing €600 and US\$800, and
- f) 2 passports belonging to the Executive Director.

A report was made to the Kuottam Police. *“Upon watching the footage of the Closed-Circuit Television (CCTV) installed at the scene, the first and second accused persons were seen in the act of conspiring and stealing the safe, which they finally hid in the car booth of the second accused, and they drove off. On the strength of the footage, both accused persons were arrested and detained.”* A search led to an amount of GH¢205,910 being found in a concealed black bag in the second accused person’s room. The second accused confessed that after breaking the safe, he found the money, four cheque books and a wallet with a passport, but no other currency. On 18th May 2021, both accused persons led the police to the scene and demonstrated how they gained access to the office before stealing the safe. After investigations, they were charged with the respective offences.

On 16th May, 2022, the court found that the prosecution had made out a case for the accused persons to answer under **section 174(1) of the Criminal and Other Offences Procedure Act, 1960 (Act 30 [Sarpong v. The Republic [1981] GLR 790]**.

The prosecution’s case was put forward by three witnesses – the complainant, Madam Erica Alliah, the General Manager of HVGC (PW1), the investigator, Detective Inspector Draklin Assamany (PW2) and the Executive Director of the HVGC, Mr. Ramiro Alejandro Viera (PW3). PW2 tendered the following exhibits in evidence:

1. The investigation caution statement of A1 (Exhibits A & A1).
2. The investigation caution statement of A2 (Exhibit A2).
3. The charged caution statement of A1 (Exhibit B).

4. The charged caution statement of A2 (Exhibit B1).
5. A photograph of the bundles of cash retrieved from A2 (Exhibit C).
6. A photograph of four UBA and Republic Bank cheque books and a wallet (Exhibit C1).
7. A pen drive containing the CCTV footage (Exhibit D).
8. A statement signed by the accused persons when the money was counted (Exhibit E).

PW3 tendered the following exhibits:

1. A statement of the money recovered from the accused persons (Exhibit E).
2. A Daily Cash Report, 16th May 2021 (Exhibit F).
3. Account Details (Dollars) (Exhibit G (Provisional) and Exhibit G).
4. *Detalles de la Cuenta* (Euro), (Exhibit G1).
5. Account Details (Euros), 16th August 2021 (Exhibit G2).
6. *Detalles de la Cuenta* (Euro), (Exhibit G3).
7. Cash in the Safe GHC, 18th May 2021 (Exhibit H).
8. *Efectivo En Caja* GHC, 18th May 2021 with signatures of A1 and A2 (Exhibit H1).

On August 17, 2021, the prosecution and accused counsel prayed for an independent interpreter to be procured to assist PW3 since he speaks Spanish. This was granted and the Judicial Service procured the services of Madam Gifty Amoabeng Mensah as a Spanish interpreter. The pen drive tendered by the prosecutor (Exhibit D), contained three videos of the main hotel car park (Scene 1), the hotel staff car park (Scene 2) and the hotel exit (Scene 3).

In **section 177(1)** of the **Criminal and Other Offences Procedure Act, 1960 (Act 30)**,

“The court, having heard the totality of the evidence, shall consider, and determine the whole matter and may,

(a) convict the accused and pass sentence on, or make an order against the accused according to law, or

(b) acquit the accused, and the Court shall give its decision in the form of an oral judgment,

and shall record the decision briefly together with the reasons for it, where necessary.”

[Comfort and Another v. The Republic [1974] 2 GLR 1].

In Hausa v. The Republic [1981] GLR 840 it was held that “...even where the trial court believes the prosecution witnesses, it should still go on to consider the accused’s version to see if it is true or, short of being true, it is nevertheless reasonably probable, having regard to the whole evidence adduced”. Justice R. Apaloo cited the principle in Lutterodt v. COP [1963] 2 GLR 429 that “...where the defence has succeeded in raising grave issues under cross-examination, it is improper for a trial court to hasten anything that would inure to muzzle the accused’s version of the issues raised”.

The standard of proof in a criminal trial includes the burden of persuasion and the burden of producing evidence [sections 10 and 11 of the Evidence Act, 1975 (NRCD 323)]. The burden of persuasion is 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 [section 10(1) of NRCD 323]. It requires a party in a criminal trial to raise a reasonable doubt concerning the existence or non-existence of a fact or to establish the existence or non-existence of a fact by proof beyond a reasonable doubt [sections 10(2) of NRCD 323].

The burden of persuasion in a civil or criminal action “...as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt” [section 13(1) of NRCD 323]. “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 11(3) of NRCD 323]. In Ali Yusuf Issa (No. 2) v. The Republic [2003 – 2004] SCGLR 174, the Supreme Court held that the burden of producing evidence and the burden of persuasion are the components of “the burden of proof”.

The issues the court must determine are whether the accused persons **have raised a reasonable doubt** that;

1. they unlawfully entered PW3’s office with the intention of committing a criminal offence,

2. they dishonestly appropriated the safe and belongings of PW3 and HVGC,
3. they agreed to act together with a common purpose to commit stealing, that is – to dishonestly appropriate the safe and belongings of PW3 and HVGC with or without any previous concert or deliberation, and
4. the second accused person intentionally and unlawfully caused damage to HVGC's safe.

The accused persons testified on oath without witnesses. The court will first consider whether the accused persons have raised a reasonable doubt that they unlawfully entered PW3's office with the intention to commit a criminal offence. "*A person who unlawfully enters a building with the intention of committing a criminal offence in the building commits a second-degree felony*" [section 152 of Act 29].

The offence of unlawful entry was defined in Kanjarga v. The State [1965] GLR 479 SC as follows; "*A person unlawfully enters a building if that person enters otherwise than in the exercise of a lawful right, or by the consent of any other person able to give the consent for the purposes for which that person enters*". The elements of this offence are that the accused persons;

- a) unlawfully entered the complainant's premises,
- b) entered the complainant's premises with the intention of committing a crime, and
- c) the offence was committed in the accused person's premises.

Madam Erica Alliah, (PW1), testified in her witness statement that A1 is a worker and A2 is a former worker at HVGC. She met them when she began working at HVGC. She admitted that she did not know the assignments they were undertaking when they were first employed and could not confirm whether they were made to carry boxes as part of their assignments. This was corroborated by PW3, Mr. Alejandro Ramiro Viera, the Executive Director of HVGC.

On 17th May 2021 at about 9 am, PW1 came to work and went into PW3's office to discuss something with him. While they were talking, Katherine, a lady who works in PW3's office, went towards the safe and started asking, "*Where is the safe? Where is the safe?*" After

discovering that the safe was stolen, PW1 went to make a report at the Kuottam Police Station, while her other colleagues watched the CCTV footage. At the police station, colleagues called to say that they had seen the accused persons in the CCTV footage.

PW1 testified that both accused persons were seen carrying the safe towards the car park in the CCTV footage. After reporting at the Kuottam Police Station, the police, CID (investigator), Executive Director (PW3), PW1 and A1 watched the CCTV footage again. The CCTV footage was watched repeatedly. PW3 testified that he watched the CCTV footage with the security chief, IT personnel and others, after he and PW1 reported the theft to the police. PW3 identified both accused persons who appeared to have a discussion at the entrance of the staircase leading to his office, checked for the presence of any other person before climbing the staircase leading to his office and descended some minutes later with the safe towards the car park.

This testimony was corroborated by the investigator, Det. Chief Inspector Draklin Assamany (PW2) who testified in his witness statement that the case reported by PW1 was assigned to him. PW1 represented the company while PW3 personally reported the loss of his property. He quickly visited the scene and after watching the CCTV footage, both accused persons were arrested. He confirmed in cross-examination that he watched the CCTV footage with a lot of people including PW1 and A1 (James), who was the first to be arrested. A1 pointed out his accomplice A2 (Aaron Tweneboah) in the CCTV footage. A search in A2's room revealed the bag containing some of the missing cash and items. PW2 obtained statements from PW1 and possible witnesses; and investigation caution statements from A1 and A2, after which they were charged. PW2 confirmed watching the CCTV footage with workers of HVGC, A1 and PW1, and testified in cross-examination that A1 pointed out his accomplice A2 in the CCTV footage.

In their witness statements, A1 and A2 admitted that they worked at the hotel. They gave the same evidence, stating that they objected to the charges levelled against them and never visited the premises to bolt away with a safe containing money. According to the accused persons, the premises are under a 24-hour security check point where every

vehicle entering and exiting is thoroughly searched. This testimony is rebutted by PW1's testimony that, although there was a security post at the hotel, cars going in and out of the hotel were not searched.

The accused persons testified that the type of investigation undertaken at the police station was unfair to them. It was established that one Katherine was the first to discover the alleged theft but she was not questioned by the investigating team. Once upon a time, they worked at the premises and were assigned various duties not known to the current management as they were not around during their stewardship. Assuming without admitting they were carrying a box, it could be part of the assignment they were undertaking during their stewardship.

The accused persons further testified that it was established that no door was broken into, and no window was tampered with. PW3 however testified that the window to his office was open when it was discovered that the safe was missing. The accused persons also said there is only one gate leading to the premises and there is no way an individual can enter into the premises without being noticed by the very vigilant security. PW3 testified that the security did not see the accused persons when they were leaving the hotel.

In cross-examination, A1 testified that he had worked at the hotel for 5 years until the day of his arrest. He worked there during the afternoon and daytime. Sometimes workers were called to work at night. On 16th May 2021, they closed at 4pm. When he was asked whether he was called by A2 to meet him at the hotel two hours later, he answered in the negative.

In his investigation caution statement (Exhibits A and A1), A1 stated that he knows Aaron (A2) as a former worker at the hotel who was sacked in February 2021. On 16th May 2021, A1 went to work at the hotel and closed at about 6pm. About 2 hours later, A2 called and asked him to meet him at the hotel compound. A1 quickly got there and A2 asked him to go with him to the top floor, where A2 entered the Executive Director's office through the window and brought out a "safe". A1 assisted him and they hid it in the Toyota car that A2 had brought to the scene. After they succeeded in stealing the safe and its contents, A2

drove away through the security gate and promised to call A1. Unfortunately, on 17th May 2021, at about 10:30 am, the police arrested A1 in connection with the theft. He later led the police to A2's house, where A2 was also arrested. In his charged caution statement (Exhibit B), A1 relied on Exhibits A and A1 and pleaded for forgiveness. A1's statements clearly show an admission to entering the premises for the purpose of committing the offence of stealing.

When it was put to A1 that he admitted the offence in his investigation caution statement which he agreed to and thumb printed, the accused answered, *"I don't know anything about that. I am not the one who wrote it. I know nothing about it."* A1 testified that it was the "CID" who wrote his investigation caution statement. The investigator spoke Twi with him when he was taking the statement but did not read it back to him. The investigator asked A1 in Twi to thumbprint the statement. A1 also testified that he did not know who wrote his witness statement. He signed it with a pen after his lawyer asked him to. His lawyer read the statement to him in Twi. When the prosecutor asked A1, *"Are you telling this court that after close of work on the 16th of May 2021 you did not go back to Hillview Hotel?"* A1 answered, *"Yes. I did not go back there"*. A1 denied that he led the police to A2's house when he was arrested on 17th May 2021 where the money and items in Exhibit C were found.

The court finds that A1's attempt to repudiate his confession statement comes too late as neither accused counsel nor A1 objected to the tendering or admission of Exhibits A and A1 when they were being tendered under **sections 120 and 3 of the Evidence Act, 1975 (NRCD 323)**. In Agrogrobisah v. The Republic [1995] DLCA 526, the Court of Appeal held that an admission of guilt in an investigation caution statement that was not objected to during the prosecution's case was sufficient evidence of the guilt of the accused person(s). The court cited the following principle of Coussey JA in Kanu v R (1952) 14 WACA 30 at 32-33:

"A voluntary confession of guilt, if it be fully consistent and probable, is justly regarded as evidence of the highest and most satisfactory nature wherever there is independent proof that a criminal act has been committed by someone."

A2 stated in his investigation caution statement (Exhibit A2), that he is an IT Administrator, wood floor installer and a former staff member of HVGC. He left HVGC in

~~February 2021. A1 is his friend and former colleague at HVGC. He was at HVGC on the~~
material date around 8 – 9 pm to meet a student. Afterwards, they went to a pub at Teiman. He left the friend and other students from the hotel and got home around 11pm.

In his charged caution statement (Exhibit B1), A2 stated, “... after breaking the safe, I found an amount of which I kept in a black bag. I also found a wallet, Republic Bank (Ghana) Limited cheque book, together with UBA cheque book. When the amount was counted in my presence, it amounted to GH¢205,910.00. I sign against the amount quoted by the CID”. The Spanish copy and the signed English statement of A1 and A2 were tendered and marked Exhibits H and H1.

The court finds that A2’s charged caution statement is a complete turnabout from his investigation caution statement and an admission that he entered the premises of HVGC for the purpose of committing the offence of stealing.

When A1 was questioned about the CCTV footage showing A1 and A2 carrying the safe, A1 said, “The picture in the video-camera – it is my picture... it is me. But it is of an old date.” The date on the video showing the **Reserve Car Park** is 2021-05-16. The video showing the **Main Entrance View** is dated 2022-05-10 and the video showing the area **From Staff Car Park** is also dated 2022-05-10. 2021-05-16 is the date on which the offence occurred. 2022-05-10 and 2022-05-10 are close to the dates on which the case management conference was held. No explanation was given for the discrepancies in the dates – however, the statements of the accused persons at the police station confirm that they were present at the hotel on the material date and entered the premises unlawfully with the intention to steal the HVGC safe, which they were seen carrying down the staircase into the staff car park.

A2 admitted that he was no longer working at the hotel when he went there between 8 – 9pm on 16th May 2021. He denied meeting A1 at the hotel and denied that he was seen carrying the safe containing the money at the hotel in the CCTV footage. He denied that it was he and A1 that were seen in the CCTV footage that was played in the courtroom. He denied that an amount of GH¢205,910.00 and UBA and Republic Bank cheque books

belonging to the HVGC were retrieved from his room when A1 led the police to his house or that he wrote and signed a statement of the amount retrieved (Exhibit E). He denied that PW2's wallet with his passport sized photographs was found in his room and replied, *"I have no idea about it"*.

When A2 was asked again, whether he went to Hillview Hotel on 16th May 2021 between the hours of 8 – 9pm, A2 responded, *"My lady, it's not true."* This is a direct contradiction of A2's admission that he was at the hotel on 16th May 2021 between the hours of 8 – 9pm. When it was put to him that in Exhibit A2 he stated that he went to the hotel at that time, A2 answered, *"Yes, I went there to pick up friends who live in the hotel. They are students there."* A2 then testified that it was not the first time he had been to the hotel after quitting his job. He has been there a *"couple of times"* to patronize services such as the swimming pool but on that date, he went to pick up friends from the hotel.

A2 denied that the area he and A1 were seen carrying the safe was far from the guest rooms and explained that he and A1 have been to report at the police station and none of the police have said a safe has been found. According to A2, the police have not brought any evidence to show the particular safe they are speaking about. When it was put to A2 that he was seen in the CCTV footage carrying the safe with the missing items, but he did not lead the police to where he and A1 kept the safe, A2 said, *"My lady, I have no idea"*. When it was put to him that he and A1 were present when the money was retrieved and counted in his room, A2 said, *"My lady, I have no idea about that"*. A2 testified that there is only one entrance to the hotel and when he was going to pick up his friend, his car was checked before he entered and checked when he was leaving. He denied that he took advantage of being a former worker to unlawfully enter the premises with A1, who was a current worker.

When the CCTV footage was viewed in court, the accused persons were directed to take their masks off, turn and stand at the same angles as the men in the footage. They were thereby identified in open court as the persons in the videos with the following timeline in Scene 2:

STAFF CAR PARK TO HOTEL SIDE ENTRANCE WITH STAIRCASE 2022-05-10

20:00:03 (20:43 minutes)

00:13 - 00:20

A man in shirt and shorts wearing a mask and slippers (**identified in court as A2**) walks into the side entrance from the upper right corner of the screen. He is holding a phone. He walks towards a space opposite the staircase which is on the near side of the screen and looks away from the screen.

02:07 - 02:12

The first man walks back out towards the car park while he is speaking on the phone.

02:13 - 02:34

He turns right at the exit and stays on the sidewalk near the wall of the hotel.

02:35

He goes beyond the view of the camera on the sidewalk.

03:12 - 03:21

He returns with another man/the second man (**identified in court as A1**) from the right sidewalk, and they walk toward the hotel side entrance.

03:22 - 03:30

The men stop to discuss something on the sidewalk. The second man (A1) stands still while the first man paces around him.

03:31

The first man (A2) starts to walk into the hotel side entrance, leaving the second man (A1) on the pavement.

03:33 - 03:43

The second man (A1) follows the first man (A2) into the space opposite the staircase on the near side of the screen. He is wearing a sleeveless t-shirt with a design on it, shorts and slippers and does not have a mask.

07:14 - 07:47

The second man (A1) comes out of the space opposite the staircase on the near side of the screen. He stands with his back to the camera, turns to the side, points towards the staff car park and says something to another person in the space opposite the staircase on the near side of the screen. He stands under the camera and continues talking to the other person.

07:48 - 08:16

The first man (A2) comes into the camera range from behind the second man (A1) on the right and also stands under the camera while they continue to talk to each other. A1's facial profile is visible.

08:17 - 09:02

The other man comes further out from under the camera and his mask and profile (head) show that he is the first man (A2) who went through the entrance. They continue to have their discussion, and make gestures – pointing to the staircase, the top and bottom of the staircase, and the staff parking lot.

09:03 - 09:06

The first man (A2) begins to walk towards the staircase hugging the right wall on his way to the stairs.

09:07 - 09:10

The second man (A1) begins to follow A2. A2 looks to the right into the space before the wall next to the staircase and looks to the left towards the staff parking lot. He then runs up the staircase.

09:10 - 09:20

A1 also looks towards the staff car park while following A2. A1 looks around quickly and runs up the first set of stairs on the staircase. A1 continues going up more slowly when he rounds the corner after the first set of stairs.

14:42 - 15:05

A1 and A2 begin to come down the staircase carrying a very heavy object. When they turn around, it is evident it is a safe because of the locks and gadgets in front of it. They carry it out of the hotel into the staff car park, out of sight of the camera.

15:57 - 16:07

A1 walks back into the hotel entrance from the staff car park towards the space opposite the staircase on the near side of the screen. He pulls his phone out of his pocket just before he goes out of sight of the camera.

16:36 - 16:54

A1 comes out of the space opposite the staircase on the near side of the screen, holding out his phone. He looks at it, puts it back in his pocket and continues walking towards the right pavement outside the hotel's side entrance until he goes out of sight of the camera - in the direction from which he entered the hotel side entrance.

The court finds from all the evidence tendered that the accused persons have failed to raise a reasonable doubt that they unlawfully entered the HVGC premises with the intention to steal HGVC's safe and its contents.

The court will now determine whether the accused persons have raised a reasonable doubt that they agreed to act together with a common purpose to commit stealing, that is – to dishonestly appropriate the safe and belongings of HVGC and PW3 with or without any previous concert or deliberation. The **Criminal and Other Offences Act, 1960 (Act 29)** provides in **section 23(1)** that *“Where two or more persons agree to act together with a common purpose for or in committing or abetting a criminal offence, whether with or without a previous concert or deliberation, each of them commits a conspiracy to commit or abet the criminal offence”* [Agyapong v. The Republic (2015) 84 Ghana Monthly Judgments 142 CA].

To succeed on a charge of conspiracy, the prosecution must prove that the accused persons agreed to act together with a common purpose to steal the safe and belongings of HVGC and PW3 (Dennis, 88). In Doe v. The Republic [1999 – 2000] 2 GLR 32 it was held that “*The offence of conspiracy does not lie against one person and at any point in time, it should be committed by two or more persons*” (cited in Agyei JA, 89).

PW3, Mr. Ramiro Alejandro Viera, the Executive Director of HVGC, testified through his witness statement in Spanish which translation was certified by Frank Boakye Agyen, a notary public of Boakye Agyen Chambers at Adabraka, Accra on 1st September 2021. He was assisted in court by a Spanish interpreter procured by the Judicial Service. In his translated witness statement, PW3 testified that he lives at the HVGC. He knows the first accused person as a worker there prior to the incident, and the second accused person as a former worker whose appointment had been terminated due to misconduct.

On 17th May 2021, PW3 entered his office and noticed that the uninstalled safe containing the amounts and items listed by PW1 was missing. According to PW1, the safe contained - US\$2,240, €9,176, GH¢310,000, four cheque books belonging to HVGC, his own wallet containing €600, US\$800 and two passports. In cross-examination PW1 testified that the amounts were confirmed by the hotel records that were given to the police. The pictures of the recovered chequebooks, wallet and cash were tendered and marked Exhibits C, C1. The statements of the money kept in the safe were tendered and marked Exhibits F, G, G1, G2 and G3.

PW3 testified that he watched the footage of the CCTVs installed at the facility with some colleagues and identified A1 and A2 who appeared to be having a discussion at the entrance of the staircase leading to his office. They checked for the presence of any person before climbing the staircase leading to his office and descending some minutes later with the safe towards the car park. Immediately, the General Manager (PW1) reported the case to the police, and PW3 gave his statement.

A1 testified that he did not know that A2 was no longer working at the hotel when they were seen in the CCTV footage. He also denied telling the police that A2 was his

accomplice, and said he knew nothing about it. A2's testimony consisted of his denying any knowledge of most of the events and attempts to rebut the statements he made to the police.

A1's investigation caution statement (Exhibits A and A1) confirms that A2 called him and sought his assistance to go up to the rooftop of the hotel, where they unlawfully entered PW3's office, took out the safe, brought it down the stairs, out into the car park and put it in A2's car. A2's charged caution statement (B1), picks up the trail to describe some of the contents of the safe that were reported missing after he opened it, and what he did with the safe.

In Scene 2 of the CCTV footage (the Staff Car Park), A2 was seen making a call after he entered the side entrance of the hotel, while he walked on the right sidewalk by the wall of the building. He went out of the camera's view and returned with A1 (02:07 – 02:35 and 03:12 – 03:43). They went into the space opposite the staircase on the near side of the screen and came out, holding a conversation under the camera for about 3 minutes before making their way up the stairs after looking around to see if there was anyone in the vicinity (07:14 – 09:20). They came back down the stairs with the safe which they carried out into the staff car park (14:42 – 15:05). The accused persons were asked to remove their masks in court and face the direction the persons in the video faced. A1's features were clearly seen and A2's features were identified in Scene 2 as the person speaking to A1.

The court finds from all the evidence that A1 and A2 have failed to raise a reasonable doubt that they acted together with a common purpose to dishonestly appropriate the safe and belongings of HVGC and PW3 with or without previous concert or deliberation.

The court will now determine whether the accused persons have raised a reasonable doubt that they dishonestly appropriated the belongings of HVGC and PW3. A person who steals commits a second-degree felony [**section 124(1) of Act 29**]. Stealing is defined as the

dishonest appropriation of a thing of which the accused person is not the owner [**section 125 of Act 29, Republic v. Halm & Another** [1969] CC 155, CA].

1 testified that on 17th May 2021, around 9 am, she went into PW3's office to discuss some issues with him when Katherine, who shares PW3's office, went towards the safe and began to ask, "*Where is the safe?*", "*Where is the safe?*". PW3 confirmed that Katherine, who works in his office, first informed him the safe was missing. When they noticed the safe was not in PW3's office, PW1 went with PW3 quickly to report the matter to the police while the other staff watched the CCTV footage.

PW2 admitted that PW1 did not mention that Madam Katherine was the first person to notice that the safe was missing and she was not featured in the investigation. Although accused counsel attempted to impeach PW1 and PW2's evidence on this point, the court finds that Madam Katherine noticed that the safe was missing while PW1 was speaking with PW3 in PW3's office. Immediately after Madam Katherine's exclamations, PW1 and PW3's attention was drawn to the fact that the safe was missing. Therefore, whether it was PW1, Madam Katherine or PW3 who first noticed that the safe was missing is not material, as they were all in the room at the time the safe was detected to be missing.

According to PW1, while they were at the police station, colleagues from HVGC called to say that they had seen the accused persons in the CCTV footage. From the police station, PW1, PW2, PW3, some policemen and A1 watched the CCTV footage repeatedly and identified A1 and A2 in the video.

On 18th May 2021, the police informed PW1 that an unspecified amount of Ghana cedis concealed in a bag was found in A2's room with a wallet containing a passport and 4 cheque books. After the money was counted in the presence of both accused persons, it amounted to GH¢205,910. This testimony was corroborated by PW3, who testified that on 18th May 2021, the police informed him that his wallet and one passport had been retrieved from A2 without the foreign currency and that upon interrogation, A1 admitted helping A2 steal the safe. PW3 tendered a statement of the cash amount of GH¢205,910 retrieved on 7th September 2021 from A2 (Exhibit E).

This evidence is corroborated by Exhibits A, A1, B and B1. PW3 also testified that A2, after much interrogation, admitted to having stolen the safe together with its contents, led the police to his room and showed them where he had hidden an unspecified amount of cash concealed in a bag, together with four cheque books belonging to HVGC. When the money was counted in the presence of A1 and A2, it amounted to GH¢205,910. All the items the police retrieved from A2 were presented to the court and handed over to PW3. However, none of the foreign currency or the balance of GH¢104,090 have been retrieved.

PW3 testified under cross-examination that the amounts in the safe were US \$2,240, as shown in Exhibit G, including petty cash of US \$200 from the reception. The police were able to retrieve some of the stolen money and documents – passports, chequebooks, and the wallet, but they did not retrieve the safe from the homes of the accused persons. In support of his evidence, PW3 tendered the following exhibits:

1. A statement of the amount of money recovered from the accused persons, signed by the accused persons (Exhibit E).
2. Daily Cash Report, 16th May 2021 (Exhibit F).
3. Account Details (Dollars), (Exhibit G Provisional and Exhibit G).
4. *Detalles de la Cuenta* (Euro), (Exhibit G1).
5. Account Details (Euros), 16th August 2021 (Exhibit G2).
6. *Detalles de la Cuenta* (Euro), (Exhibit G3).
7. Cash in the Safe GHC, 18th May 2021 (Exhibit H).
8. *Efectivo En Caja* GHC, 18th May 2021 with signatures of A1 and A2 (Exhibit H1).

According to PW3, the keys to his office are kept by him and the maintenance office. However, he told the police that the accused persons knew his office and movements. PW2 could not confirm under cross-examination whether the security post at the hotel was used to check every vehicle that came in and out of the hotel. PW1 testified that the hotel security men do not search the cars of guests when they are leaving. She admitted that the CCTV footage did not show the safe being lifted from where it was installed. However, she stated that she saw A1 and A2 coming down the stairs with the safe in the CCTV footage. She denied accused counsel's assertion that she was "...using the accused persons as sacrificial lambs to cleanse the sins of other people".

Accused counsel attempted to lay blame for the stolen safe on Madam Katherine, PW3's alleged girlfriend. When he suggested that the short period of acquaintance by PW2 of the complainants and witnesses was not sufficient to conclude that the accused persons are the ones in the CCTV footage, PW2 testified that it was A1 who identified A2 as his accomplice while they were watching the CCTV footage and it was A1 who led PW2 to A2's house before A2 was apprehended.

Accused counsel asserted that what was seen in the CCTV footage was simply an assignment given to the accused persons in their early days of employment, and, before PW3 joined Hill View Guest Centre "*...the accused persons were, once upon the time, made to carry boxes, so it was not strange if you see any camera showing them carrying boxes*", PW3 denied this assertion and answered, "*Is the CCTV camera footage in the present or the past?*" He testified that, "*The footage is a new one at the time they took the safe*".

A1 denied that the cash in Exhibit C was retrieved from A2's room and counted in the presence of A1 and A2 who both signed and thumb-printed a statement of the amount recovered (Exhibit E). In his investigation caution statement (Exhibits A and A1), A1 stated that he knows Aaron (A2) as a former worker at the hotel who was sacked in February 2021. On 16th May 2021, A1 went to work at the hotel and closed at about 6pm. About 2 hours later, A2 called and asked him to meet him at the hotel compound. A1 quickly got there and A2 asked him to go with him to the top floor, where A2 entered the Executive Director's office through the window and brought out a "*safe*". A1 assisted him and they hid it in the Toyota car that A2 had brought to the scene. After they succeeded in stealing the safe and its contents, A2 drove away through the security gate and promised to call A1. Unfortunately, on 17th May 2021, at about 10:30 am, the police arrested A1 in connection with the theft. He later led the police to A2's house, where A2 was also arrested. In his charged caution statement (Exhibit B), A1 relied on Exhibits A and A1 and pleaded for forgiveness. A1's statements clearly show an admission to entering the premises for the purpose of committing the offence of stealing the safe and belongings of HVGC and PW3.

When A1 was cross-examined on his investigation caution statement, he attempted to repudiate it. However, the court has found that A1's investigation caution statement, which was admitted without objection during the prosecutions' case, could not be repudiated at this late stage.

A2 admitted breaking the safe and taking the money, Republic Bank (GH) Ltd and UBA chequebooks in it, in Exhibit B1. He also admitted signing the statement of the amount of GH¢205,910 found in his room by the police. In his charged caution statement (Exhibit B1), A2 stated, "... after breaking the safe, I found an amount of which I kept in a black bag. I also found a wallet, Republic Bank (Ghana) Limited cheque book, together with UBA cheque book. When the amount was counted in my presence, it amounted to GH¢205,910.00. I sign against the amount quoted by the CID". The Spanish copy of this statement and the English signed statement of A1 and A2 were tendered and marked Exhibits H and H1. A2's charged caution statement is a complete turnabout from his investigation caution statement and an admission that he dishonestly appropriated HVGC's safe and HVGC and PW3's belongings in the safe.

The court finds from the evidence that A1 and A2 have failed to raise a reasonable doubt that they dishonestly appropriated the HVGC safe, four cheque books, wallet, passport and cash belonging to HVGC and PW3 that were in the safe.

The final issue to be resolved is whether A2 has raised a reasonable doubt that he unlawfully and intentionally caused damaged to HVGC's safe. The offence of causing unlawful damage is as follows [**section 172(1) of the Criminal and Other Offences Act, 1960 (Act 29)**]:

"A person who intentionally and unlawfully causes damage to any property,

- (a) to a value not exceeding one million cedis, or without a pecuniary value, commits a misdemeanour,*
- (b) to a value exceeding one million cedis commits a second-degree felony".*

The definition of *intent* in **section 11 of Act 29** includes:

- (1) *Where a person does an act for the purpose of causing or contributing to cause an event, that person intends to cause that event, within the meaning of this Act, although in fact, or in the belief of that person or both in fact and also in that belief, the act is unlikely to cause or to contribute to cause the event.*
- (2) *A person who does an act voluntarily, believing that it will probably cause or contribute to cause an event, intends to cause that event within the meaning of this Act, although that person does not do the act for the purpose of causing or contributing to cause the event.*
- (3) *A person who does an act of such a kind or in a manner that, if reasonable caution and observation had been used, it would appear to that person,*
 - (a) *that the act would probably cause or contribute to cause an event,*
 - (b) *that there would be great risk of the act causing or contributing to cause an event,**intends for the purposes of this section, to cause that event until it is shown that, that person believed that the act would probably not cause or contribute to cause the event, or that there was not an intention to cause or contribute to it.*

According to the accused persons, currently, no safe has been retrieved to be compared with the alleged safe being carried out of the hotel in the purported CCTV footage. In **section 14 of NRCD 323**, *“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”*. A2 admitted in his charged caution statement to *“breaking the safe”*, finding the wallet, cheque books and cash and keeping the amount he found in it, in a black bag. PW3 testified that the safe could not be retrieved as A2 told the police while he was being interrogated, that he broke it, took out its contents and sold it as scrap. A2’s charged caution statement, having been admitted during the prosecution’s case, is sufficient proof of his causing damage to HVGC’s safe [Agrogrobisah v. The Republic [1995] DLCA 526]

After considering all the evidence, the court finds that A1 and A2 took the safe out of HVGC. A2 sent it to his home where he broke it to get to its contents and then disposed of it. The court therefore finds that A2 has failed to raise a reasonable doubt that he

intentionally and unlawfully caused damage to HVGC's safe within the meaning of **sections 11(1) and (2) and 172 (1) of Act 29.**

Considering the entire evidence adduced, the court finds that the accused persons have failed to raise a reasonable doubt that,

- a) they unlawfully entered PW3's office at the HVGC with the intention of committing the criminal offence of stealing,
- b) they agreed to act together with a common purpose to commit stealing – to dishonestly appropriate the safe and belongings of PW3 and the HVGC – with or without any previous concert or deliberation,
- c) they dishonestly appropriated the belongings of PW3 and the HVGC, and
- d) the second accused person intentionally and unlawfully caused damage to the HVGC safe.

The accused persons are thereby found guilty and convicted of the offences of;

- a) conspiracy to commit stealing contrary to **sections 23(1) and 124(1) of the Criminal and Other Offences Act, 1960 (Act 29),**
- b) unlawful entry into the Executive Director's office at the Hill View Guest Centre (HVGC), contrary to **section 152 of Act 29,**
- c) stealing various amounts of money in local and foreign currency, a safe, wallet, passports and cheque books belonging to HVGC and its Executive Director (PW3), contrary to **section 124(1) of Act 29,** and

The second accused person is also convicted of causing unlawful damage to a safe belonging to HVGC contrary to **section 172(1) of Act 29.**

SENTENCING GUIDELINES

The offence of *Conspiracy* is an inchoate offence in **section 23(1) of Act 29** and the punishment for conspiracy to steal is the same as the substantive offence. *Stealing* is a second-degree felony with a maximum penalty of 25 years under **section 296(5) of the Criminal and Other Offences Procedure Act, 1960 (Act 30).**

Unlawful Entry is a second-degree felony with a term of imprisonment of a maximum of 10 years [section 296(2) of Act 30].

Causing Damage to property worth over a million old cedis or GH¢100 is a second-degree felony with a term of imprisonment of a maximum of 10 years [section 296(2) of Act 30].

The court finds from the facts and evidence, the following aggravating factors: the offences were premeditated; the accused persons, particularly A1, were in a position of trust with the hotel; the value of the stolen items was high; the majority of the cash stolen was not recovered; A1 was charged with three offences and A2 was charged with four offences. The fact that the accused persons have no previous convictions and some of the stolen Ghana cedis were retrieved, are mitigating factors. The court also finds that A2 was the instigator of the offence who had the stolen items within his possession; and A1 aided A2 to commit the offences.

While enquiring into the personal circumstances of the accused persons, A1 told the court that he is not married and has no children. His father has passed but his mother is alive. His brother looks after his mother, but A1 sends her money. He has 11 siblings, the eldest of which is over 40 years and the youngest is 13 years old. He lives at Teiman near Oyarifa.

A2 is married with a three-year-old and a one-year-old. Both of his parents are alive – his 71-year-old father lives at Tarkwa and his 65-year-old mother is at Kanda. He looks after his parents as an only child and lives at Adenta Pantang Junction.

Madam Erica Alliah, the General Manager of the Hillview Guest Center told the court that A1 and A2's actions have made the hotel unsafe. When workers go to work every day, there is a suspicion that people are plotting to steal. The moneys stolen could have been used to maintain the place or used for another purpose. However, the hotel is operational and PW3 has returned to his home country.

The accused persons are sentenced as follows:

1. A1 and A2 are sentenced to a term of imprisonment of 5 years in hard labour, for conspiring to steal HVGC's safe and its contents, which belonged to HVGC and PW3.
2. A1 is sentenced to a term of imprisonment of 5 years in hard labour for stealing HVGC's safe and its contents which belonged to HGVC and PW3.
3. A2 is sentenced to a term of imprisonment of 7 years in hard labour for stealing HVGC's safe and its contents which belonged to HVGC and PW3.
4. A1 and A2 are sentenced to a term of imprisonment of 5 years for unlawfully entering PW3's office at the HVGC with the intention to steal HVGC's safe and its contents which belonged to HVGC and PW3.
5. A2 is sentenced to a term of imprisonment of 5 years with a fine of 250 penalty units, or in default, to serve a further sentence of 2 years in hard labour, for causing damage to HVGC's safe that he stole with A1 from PW3's office at HVGC.
6. A2 shall pay compensation of 5,000 penalty units to the HVGC, which may be recovered through civil proceedings for the damage caused to its safe.
7. The sentences of the accused persons shall run concurrently.
8. The accused persons shall be enrolled in work programmes while they serve their terms of imprisonment.

The accused persons are informed of their right to appeal their sentences.

Accused Counsel: Ameyaw Nyamekye Esq.

Counsel Watching Brief for the Complainant: Rebecca Darko Esq.

(SGD)

DORA G. A. INKUMSAH ESHUN

CIRCUIT JUDGE
