

IN THE CIRCUIT COURT HELD AT YENDI ON TUESDAY 30<sup>TH</sup> MAY 2023,  
BEFORE HIS HONOUR ANTHONY ADUKU-AIDOO ESQ, CIRCUIT COURT  
JUDGE.

COURT CASE No. CT/24/2023

REPUBLIC

VRS

ABDUL KARIM OSMAN

J U D G E M E N T

Introduction

The accused person was charged with one count of stealing, contrary to section 124(1) of the Criminal and Other Offences Act, Act 29, 1960 (as amended). The accused person pleaded guilty to the charge and was accordingly convicted for the offence. The case was adjourned for sentencing but on the adjourned date the accused person changed his plea from “guilty” to “not guilty”. So, this case proceeded to trial and this is the judgement of this trial court.

Facts of case

The facts of the case as presented by prosecution to this court are that the complainant, Inusah Saiyibu, is a Fulani herdsman residing at Miendogu, a suburb of Yendi and taking care of his master Alhassan Mahama’s cattle whilst the accused person Abdul Karim Osman is a Fulani herdsman resident in Sankpala, a suburb of Yendi. On the 7<sup>th</sup> day of March, 2023, at about 3.00am, complainant went to check on his cattle in his kraal as usual and detected that one of his cows was stolen. Complainant went and informed his master Alhassan Mahama, a witness in this case and they started searching for the stolen cow. Complainant whiles searching for the stolen cow had a call from one of his friends whom he had earlier on informed about the stolen cow, that the accused person had been arrested for offering the said cow for sale.

Complainant and witness went to the scene near the Yendi teak forest, where the stolen cow was tied on a tree. The owner identified the cow as his animal. Complainant reported the case to the police and the photograph of the cow was taken for evidential purposes. Accused admitted the offence in his investigation caution statement to the police. After investigations, the accused person is charged with the stated offence and arraigned before this court for trial.

### **Burden of Proof**

Section 11(2) of the Evidence Act, NRCD 323, 1975, and as posited in the Supreme Court case of *Fuseini v. Rep. (J4/32/2014) [2018] GHASC 28 (09 May, 2018)*, that the prosecution bears the burden of proving the guilt of the accused beyond reasonable doubt. And in accordance with the current practice directive, after the prosecution has done full disclosure and served the witness statements on the accused, it called four witnesses in its bid to prove the guilt of the accused to discharge its burden of proof.

### **The Prosecution's Case**

PW1, Inusah Saiyibu, a Fulani herdsman and a resident of Miendogu, Yendi, testified that he is taking care of the cattle of his master, Alhassan Mahama. On the 7<sup>th</sup> March, 2023, at about 3.00am he went out to check on the cattle in the kraal as usual. He detected that one of his cows was missing. He then informed his master, Alhassan Mahama and some of his friends about the stolen cow for them to be on the lookout for same. He later had a call from a friend he had earlier informed about the stolen cow, to come and have a look at a cow the accused person was offering for sale near the Yendi Teak Plantation. He then placed a call to his master, Alhassan Mahama, to proceed to the place where the cow was tied up. The cow owner upon reaching where the cow was, identified the cow as his animal that was missing. The witness also went to the location where the cow was and met his master and PW1 who feigned interest in buying the cow from the accused person. Together with the named persons, the accused person was arrested and sent to the Police station, upon suspicion of stealing the said cow. With that the witness ended his testimony.

PW2, Iddrisu Yakubu, was next witness to be called by the prosecution. He testified that on 7<sup>th</sup> March, 2023, at about 2.00am he was sitting with some of his friends. Suddenly, accused person Abdul Karim Osman came to where he was seated and told him that he had a cow for sale. The witness feigned interest to buy the cow because he suspected the cow to be stolen considering the time the accused person was offering the cow for sale. He asked the accused person where the cow was and the accused person told him that it was at the Bimbila station, where the drinking spot is located. Together with the witness' friends, the accused person led them to a location near the Yendi teak plantation on the Yendi-Bimbila road, where the witness saw the cow tied to a tree near a drinking spot. The witness then asked the accused person how much he was offering the cow for and the accused person told the witness that, he was offering it for GH¢2,500.00. They bargained and negotiated the price until the witness agreed with the accused person at the price of GH¢1,500.00.

The witness then informed the accused person that he was going to bring the money and asked his friends to engage the accused person in conversation whiles he rushed to the Ghawa palace to report the matter. One Alhaji was dispatched with the witness to the location of the stolen cow to verify the report of the witness. According to the witness, he agreed with the Alhaji on a plan to urge the accused person to follow the witness for the price money for the cow. The witness took the accused person together with one of the witness' friend on a motor bike with the pretext that the witness was going to give the price money to the accused person. Whiles on their way, the accused person became suspicious of the plan of the witness and asked the witness where they were going to give him his money. Upon reaching a place close to the community centre in Yendi, the accused person realised that he was being sent to the police station and so decided to jump off the motor bike, but the friend of the witness seated on the bike with the accused person, held the accused person from escaping. They fell off the motor bike unto the ground and the witness, with the help of others, managed to send the accused person to the police station. With that, the witness ended his testimony.

PW3, Alhassan Mahama, a trader was next to testify. He testified that on 7<sup>th</sup> March, 2023, at about 5.30am, he had a call from PW1 informing him that one of his cows had been stolen from his kraal. Later, he had another call that the accused person was offering a cow for sale near the Yendi teak plantation. He proceeded to the location and saw a cow tied up on a tree. He identified the cow as his stolen cow. With the help of PW1 and PW2, the accused person was arrested and sent to the police station. With that he ended his testimony.

PW4, the investigator, No. 10272 PW/L/Cpl. Joyce Adusei was the next and the last witness the prosecution called in aid of its case. She testified that on 7<sup>th</sup> March, 2023, a case of stealing was reported and referred to her for investigations. She tendered the statutory statements that came to her in her investigations. She tendered the statutory statements in evidence and with that the prosecution closed its case.

#### *Whether or not the prosecution has established a prima facie case*

At the end of the case for the Prosecution, in accordance with *section 173 of the Criminal Procedure Act, Act 30, (1960)*, it is incumbent on this court to find out whether, upon the evidence adduced by the prosecution against the accused, a prima facie case has been established to warrant the accused to proffer an answer.

On record, at the close of the case of the prosecution, there is evidence that the accused person offered a cow that was not his, but allegedly belonged to PW3 for sale. This clearly, might be a case of stealing. The accused, was therefore offered the opportunity to state his side of the case in defence.

#### *The case for the Accused*

In entering his defence, the accused person gave evidence himself. The evidence of the accused was that, he did not know anybody in town here as he is new in town. He stated that he was not guilty because, the picture in Exhibit B, exhibited as the picture of the stolen cow by the accused person did not capture him in the picture, as the

person who stole it. He further stated that, he went to visit his relatives and was coming back. Upon reaching here in Yendi, he was arrested as the one who has stolen the said cow. That was the testimony of the accused person.

The accused person intimated to this court that he had no witness to call as he knew no one here, in Yendi. And so the accused person ended his case in his defence. This court had no option other than to close his case in defence and adjourn for judgement.

### *The guilt of the Accused*

The accused is charged with one count of stealing, contrary to *section 124(1) of the Criminal and other Offences Act, Act 29, 1960, as amended*. To this charge he pleaded not guilty, hence this trial.

*Section 124(1) of the Criminal and other offences Act, 1960, Act 29, as amended* states:

#### **Section 124—Stealing.**

(1) Whoever steals shall be guilty of a second degree felony..

The offence is explained in *section 125* of the same Act thus:

#### **Section 125—Definition of Stealing.**

A person steals if he dishonestly appropriates a thing of which he is not the owner.

For prosecution to secure a conviction for the charge of stealing, it has to lead evidence to prove the accused person appropriated something of which he is not the owner.

Evidence on record, indicates that the prosecution through its witnesses has shown that the accused person herein, offered a cow whose picture is contained in Exhibit B for sale to PW2. PW1 who is the caretaker of the cattle of PW3 informed PW3 that the cow contained in the picture of Exhibit B, belonging to PW3, was missing from its kraal on the night of 6<sup>th</sup> March, 2023. Thus, the case for the prosecution was that the accused person had gone to appropriate the cow in Exhibit B and had tried to offer it for sale to PW2 for an agreed cash price of GH¢1,500.00. It is when PW2 lured the accused person with the pretext of being sent to a safer location for the payment of the

cash price, that the accused person was arrested and sent to the police station. Consequently, the accused person should be found guilty of stealing the cow belonging to PW3.

On the other hand, the accused person, in his evidence in chief denies ever having seen the cow contained in the picture of Exhibit B. In fact, he even denies having been arrested in connection with a stolen cow. His story was that he visited his family and was on his way back when he was arrested and beaten for no apparent reason.

I have already indicated earlier on in this report that the accused person pleaded guilty to the charge of stealing on the 9<sup>th</sup> March, 2023, when he was first arraigned before this court and his plea was taken. To make sure that the accused person indeed, meant his guilty plea, I caused the cow in the picture of Exhibit B to be shown to him for confirmation that he was being charged to have stolen the cow contained therein. The accused person confirmed that, he indeed, stole the cow therein contained except that the rope used in tying the cow had been changed but the cow in the picture was the one he stole. This court accordingly, convicted him on his guilty plea to the charge and adjourned the case for sentencing at the next adjourned date, only for the accused person to change his earlier plea of guilty to “not guilty”.

During cross-examination of the accused person, the prosecution asked the accused person about the cow in Exhibit B and the accused person stated emphatically, that he had never seen the cow whose picture is contained in Exhibit B. Simply, the accused person sought to deny any knowledge of anything he was asked in cross-examination. His pattern of answering questions under cross-examination made him come across the mind of this court as someone who has vowed not to tell any truth about the case at hand. He was simply lying his way out even though he was under oath to tell the truth.

Again, when asked why his plea changed from “guilty” to “not guilty”, the accused person stated in court that he was coerced by one of the police officers on duty, on the day he was being arraigned before this court to accept that he stole the cow so that he would be set free by the court. Meanwhile, perhaps the accused had forgotten that in

an earlier statement to the police, in Exhibit A, his investigation caution statement, he stated that he went to steal the cow because one security man around the Bimbila station, had told him, the accused person that he, the security man wanted a cow to buy. So, when the accused person brought the cow, he tied it besides a bar, and he went to bring the said security man to come and have a look at it.

In the case of REPUBLIC v. MAIKANKAN AND OTHERS [1972] 2 GLR 502-514 Aboagye J, (as he was then), said in an obiter that:

“Once it has been proved that a witness has made previous statements to the police, the contents of which are inconsistent with the evidence given in court by the same witness, the effect of the evidence is negligible. ”

Again, in the case of STATE v. OTCHERE AND OTHERS [1963] 2 GLR 463-531, the court held in holding 14 thus:

“A witness whose evidence on oath is contradictory of a previous statement made by him whether sworn or unsworn is not worthy of credit and his evidence cannot therefore be regarded as being of any importance in the light of his previous contradictory statement unless he is able to give a reasonable explanation for the contradictions.”

In the light of the above, this court would not put much premium on the evidence of the accused person in his defence. This court is of the mind that the accused person was merely denying everything to portray to this court that he is innocent of the offence, while he is not. I therefore, find as a fact that the accused person stole the cow whose picture is captured in Exhibit B. I find him guilty of the offence of stealing as charged and convict him accordingly on that sole count.

### Mitigation Plea

Prosecution pleads in mitigation that the accused person is a young offender who is not known. But stealing of cows has become too rampant in Yendi Municipality. We pray that the accused person is punished severely to serve as a deterrent to others who

intending doing same. The accused person also prays for forgiveness and that his parents are no more.

*Sentence*

Having heard from both the prosecution and the accused person on their respective mitigation pleas, I have also taken cognisance of the fact that the accused person has been consistently throughout this trial has tried to thwart the cause of justice by just denying anything he is asked and not offering any plausible side of his case. He is sentenced to serve three years in prison, HIL without the option of a fine. The stolen cow is to be returned to the lawful owner, PW3, Alhassan Mahama. I hereby order.

(SGD)

H/H ANTHONY ADUKU-AIDOO ESQ.

(CIRCUIT COURT JUDGE)