IN THE CIRCUIT COURT HELD AT MPRAESO ON FRIDAY 14TH DAY OF APRIL 2023

BEFORE HIS HONOUR STEPHEN KUMI ESQ CIRCUIT JUDGE.

COURT CASE NO. B7/97/2022.

THE REPUBLIC

V

AWOTWI-GYAABA LYDIA

JUDGMENT:

On the basis of a charge sheet filed in the Registry of this court, the Accused was charged with and put before this court on one count of stealing contrary to section 124 (1) of the Criminal and Other Offence Act, 1960, Act 29, as amended.

Following her arraignment before this court, she pleaded not guilty to the charge; thereby joining issue with the prosecution; whose effect was for the prosecution to assume the onus of proof by calling sufficient and credible and admissible evidence to prove the guilt of the Accused beyond reasonable doubt.

BRIEF MATERIAL FACTS:

In terms of the brief material facts as supplied by the prosecution on the first arraignment date, they are essentially that the Complainant in this case is one Dr. Philip Agyepong Afrifa; the director of the Mpraeso General Hospital; while the Accused was a staff at the Complainant's hospital until this happened.

The prosecution alleges that during August, 2021, the Complainant visited the hospital at night and detected that the Accused had sent some boxes of assorted drugs out of the hospital, which he had found strange. That caused him to order the account department to conduct an audit on the Accused, which revealed that the Accused could not account for drugs amounting to GHC 83,271.00. That finding was corroborated by a software report from the ICT department of the hospital which showed that the said transactions had been authorized by the Accused's unique pass code.

That led to the arrest of the Accused, and that in the course of the police investigations, some members of the hospital's staff told the police they had witnessed some instances- mostly at night- when the Accused had asked some of the staff to convey some drugs in boxes from the hospital.

The Accused person herself upon being cautioned, admitted taking away and selling GHC 4,000.00 worth of drugs without the knowledge of the hospital management. At the end of the police investigations, the Accused was charged and put before this court.

CASE OF THE PROSECUTION:

At the trial, the prosecution called some six (6) witnesses to prove their case against the accused person.

The first prosecution witness was Dr. Philip Agyapong Afrifa; who identified himself as a medical officer and the Director of the Mpraeso General Hospital. He stated that the Accused was employed and put in charge of the pharmacy and stores at the hospital around December, 2022; and recalled that from the time the Accused assumed her position, the hospital began to experience some irregularities with the stock balances.

He also recalled an instance during the month of October, 2031, when he went to the hospital at about 8:30pm and saw that some of the staff were loading some boxes of drugs into a car, which was contrary to the practice of the court and when he had confronted the Accused about the incident, the Accused replied that the boxes were empty.

According to the PW1, what he witnessed caused him to make some enquiries at the hospital, which revealed that the Accused person had on some several occasions authorized some staff of the hospital to package drugs out of the hospital; which revelation was confirmed by the PW2, PW3 and PW4.

That caused him to engage the services of some Information Technology personnel to generate a printout from the hospital's software, which revealed that an amount of GHC 83,271.00 could not be accounted for. He added that the transactions were made with the Accused's unique pass code between the period of December, 2020 to October, 2021. He was compelled to lodge a criminal complaint against the accused based on the outcome.

The second prosecution witness was Portia Kissi Belinda. She did her attachment at the Mpraeso General Hospital between June, 2021 to December, 2021 and knows that Accused and the others prosecution witnesses in the case.

According to her, during her time at the hospital, she was sent by the Accused person on several occasions to deliver sealed boxes with a number written on it from the hospital and she was asked to deliver the contents or box to any moving car to Asakraka. After some time, she heard that the Accused had sold out some drugs belonging to the hospital without crediting the hospital's account.

PW3 was Boadi Agnes; a medicine counter assistant at the hospital. She testified that due to the nature of her job, she usually goes for night shift at the facility. She recalled that during the period she worked at the hospital, the Accused asked her on several occasions to package some assorted drugs to be sent out of the. That when she had reminded the Accused that sending drugs out of the hospital was contrary to practice, Accused often replied that the administrator was aware of her actions.

She added that the management of the hospital conducted some investigation in October, 2021, during which the Accused sent a text message to her, asking her to tell a lie about the quantity of drugs sent out in case she was questioned by management, a request she refused.

The PW4 was Asante Michael; also a medicine counter assistant at the hospital. He also testified that during the time he worked with the Accused, the Accused asked him on several occasions to package some assorted drugs to be sent out of the which he did.

According to him, the Accused would ask him to take the drugs to the road side, in front of the E. C. G office at Mpraeso. He added that that when he had asked the Accused why she was doing that as that sending drugs out of the hospital was not the practice, Accused replied that the drugs would be returned to the hospital. However, according to him, he never for once saw that the drugs had been returned contrary to the claims of the Accused .

The PW5 was Gideon Anim; who identified himself as an accountant at the hospital. He stated that the hospital operates using a software that captures the data of all activities and transactions including stock management of the hospital. He explained that the said software identifies each staff member with a unique identity and password.

He also told the court that from the time the Accused assumed the role as the one in charge of the stores and pharmacy, the hospital suffered some irregularities with the stock balances, which caused management to conduct investigation.

It was the further testimony of the PW5 that during the investigation, a data was pulled out from the software, which data revealed that from December, 2020 to October, 2021, when the Accused was in charge of the stores and pharmacy, she did several stock adjustments without the authority of the management. PW5 added that the said adjustment also revealed some deductions in stock without the corresponding entries which should have had positive inflows as per the retrieved data.

The last but not the least prosecution witness (PW3) was Detective Insp. Agyenim Boateng of the Mpraeso Central Police Station . His told the court about how the report was made against the accused, how same was referred to him and a colleague for investigations and how he went about the investigations.

His testimony was essentially a rehash of the essential parts of the testimonies of the previous prosecution witnesses. He also added that in the course of the investigations, the Accused person in the company of some others appeared before the district police commander and that during the interactions that took place there, the Accused person admitted she could not account for the amount of GHC 83,271.00..

According to the police investigator, based on the above investigations and information, the accused person was charged with the above offence and put before this court.

Meanwhile, the PW6 also tendered into evidence the following documents in support of the case of the prosecution: They were the cautioned statement and charge statement of the Accused, marked as Exhibits A and B respectively.

CASE OF THE ACCUSED PERSON:

The court, at the close of the case of the prosecution, was satisfied that the evidence as adduced by the prosecution, had succeeded to establish a prima facie case against the Accused on the count she faces.

The court therefore called upon and asked the Accused to open her defence on the count in order to avoid a ruling of the court against her on the sole count against her. This position is statutorily provided for under section 174 of the Criminal Procedure Act, 1960, Act 30, as follows:

> ***" "At the close of the evidence in support of the charge, if it appears to the court that a case is made against the accused sufficiently to require him to make a defence, the court shall call upon him to enter into and shall remind him of the charge and inform he that, if he so desires, he may give evidence himself, or make a statement…"***

In her sworn defence, she stated that she was employed as a pharmacist at the hospital in 2016. She recalled that somewhere in the year 2021, a physician assisted who worked at Asakraka Clinic- and also doubled as a former worker at the Mpraeso General Hospital, called Dr. Kwabi Kingsley- came to the hospital and borrowed some medical and non-medical items that he subsequently returned. She had directed him to the hospital administrator; adding that even long before she had been appointed to that post, that had been the usual arrangement between the said Dr. Kwabi and the hospital.

Based on that she had assumed the arrangement to be normal and continued to deal with the said Dr. Kwabi along the same lines, during which he came to borrow medical and non-consumables from the hospital, which he subsequently returned; while in some instances, the Dr. Kwabi would send or pay

the equivalent amount to her with which she used to purchase the corresponding items from the hospital's supply to replace them.

She added that on one occasion too, the Dr. Kwabi came for some medical and non-consumables to the tune of GHC 3,000.00 and sent the money to her to purchase the replacements from the hospital's supply but due to her busy work schedule, she could not purchase from the supply to replace them; and that about a week later, the Dr. Kwabi came to buy drugs worth GHC 1,000, before she was arrested for the instant offence.

According to the Accused, following her arrest, the respective amounts of GHC 3,000.00 and GHC 1,000.00 for the above-mentioned transactions were deposited with the police by herself and the Dr. Kwabi respectively.

It is her defence that the alleged shortages was as a result of some irregularities that were made in the entry of receivables following the installation of a new software for their transactions, which resulted in some of the items either been over-estimated or under-estimated; a situation she drew the attention of the hospital's management to.

She added that at the direction of the hospital's management, she took proper stock adjustment with the staff at the pharmacy department and reported back to the management; adding that that the said stock adjustments were recorded in a book kept by the hospital. It is also her defence that even though following her arrest, she was directed by a police officer to go to the hospital pharmacy and stores to take proper stock of the medical and non-consumables and do a handover to the hospital management, she was however denied by the management on three different occasions.

The Accused closed her defence without calling a witness.

EVALUATION OF EVIDENCE AND APPLICATION OF THE LAW:

ISSUE FOR DETERMINATION:

On the whole of the evidence before the court at the end of trial, the sole question for determination is ***whether or not the prosecution succeeded to establish or prove the guilt of the accused person beyond reasonable doubt on the one count of stealing.***

ADDRESSING THE ISSUE:

As has been said above, the accused person came to the court and pleaded not guilty on the charges. The effect of her plea was as follows in law, especially in a criminal case of this nature:

> ***"Unless it is shifted, the party claiming that a person has committed a crime or wrongdoing has the burden of persuasion on that issue". See section 15 of the Evidence Act, 1975, NRCD 323.***

It may also be important to mention section 11 (2) of the Evidence Act, NRCD 323, which provides as follows:-

> ***"11(2) in any civil or 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 reasonable doubt."***

Meanwhile, in terms of judicial pronouncements on this burden and standard of proof in criminal trials, in the case of **Donkor v The State [1964] GLR 598, SC**, it was held inter alia by the Supreme Court of Ghana that in criminal trials, the burden of proof in the sense of the burden of establishing the guilt of the accused is generally on the prosecution, which burden must be discharged beyond reasonable doubt.

This burden of proof that the prosecution must satisfy in the present proceedings was famously captured in the following *ipsissima verba* of Viscount Sankey, LC in the case of Woolmington v. DPP (1935) AC 462. The learned Lord Chancellor delivered of himself thus;

> ***"No matter what the charge or what the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained….".***

In order to satisfy the Constitutional, statutory and Common Law threshold of proof beyond reasonable doubt, the law is that *"the prosecution has a duty to prove the essential ingredients of the offence with which the appellant (accused) and the others have been charged…"* See the case of **Frempong** alias **Iboman v The Republic [2012] 1 SCGLR 297, SC per Dotse JSC.**

It is instructive to state that for the purposes of addressing the issue, it is necessary that this court to set out in some reasonable detail the essential ingredients of the offences in question. When that has been done, they will be related to the facts and evidence before the court in this case, based on which would determine to what extent and degree the prosecution has been able to prove their case against the Accused on the stealing charge.

Section **124 (1)** of **Act 29/1960** creates the offence of stealing. It states that *"a person who steals commits a second degree felony"*.

However, section **125** of **Act 29/1960**, defines the offence of stealing under our statute: Stealing is defined under that section as;

> ***"A person steals who dishonestly appropriates a thing of which that person is not the owner".***

In the case of **Brobbey** and **Others v The Republic [1982-83] GLR 608**, ***Twumasi J (as he then was)*** stated the essential elements of stealing under Ghana laws were stated to be as follows:

> ***(i) The person charged must have appropriated the thing allegedly stolen.***
>
> ***(ii) The appropriation must be dishonest***
>
> ***(iii) The person charged must not be the owner of the thing allegedly stolen.***

It can be said that the two (2) main conditions that must exist or be established in a case of stealing is dishonesty and appropriation; or dishonest appropriation. In the case of **Anang v The Republic [1984-86] 1 GLR 458**, dishonesty in the offence of stealing was stated to connote *"moral obloquy ……. such a nature as to cast a slur on the character revealing him as a person lacking in integrity or as a plainly dishonest person…."*

Meanwhile, appropriation is defined under section **12 (1)** of **Act 29/1960** (supra) to mean *"dealing with the thing by the trustee, with the intent of depriving a beneficiary of the benefit of the right or interest in the thing, or in its value or proceeds, or a part of that thing"*.

Similarly, under section **122 (2)** of the same **Act 29/1960** (supra), appropriation of a thing in any other case means

> ***"any moving, taking, obtaining, carrying away, or dealing with a thing, with the intent that a person may be deprived of the benefit of the ownership, of that thing, or of the benefit of the right or interest in the thing, or in its value or proceeds, or part of that thing…."***

With the benefit of the above little discussion about the nature of the offence in this judgment, and their essential ingredients that the prosecution ought to prove in such cases, I would now go ahead and determine the issue in this case as to whether or not the case of the prosecution succeeded to prove beyond reasonable doubt that the accused person herein committed the alleged offence.

From the evidence adduced by the prosecution before the court, they relied mainly on the testimonies of the PW1 to the PW4. From their evidence, the court will wish to state specifically and without any reservations that the evidence adduced by the prosecution did not prove or establish conclusively that

the Accused had specifically misappropriated or dishonestly appropriated exactly GHC 83,271.00 worth of drugs as contained in the charge sheet and as mentioned by the PW1.

Indeed, the Accused had challenged that total figure during her cross-examination of the witnesses. Even though from the record, some purported audit report (tally card report) was filed as part of the disclosures, same was not properly tendered and admitted into evidence to constitute as admissible evidence against the Accused and to prove the alleged specific misappropriation of GHC 83,271.00 worth of drugs.

Those documents were said to be data or printout from the hospital's software showing some several stock adjustments. But apart from the said documents not been properly tendered and admitted into evidence beyond their mere filing, the court holds that they were self-serving documents and by extension hearsay evidence, as their source and method of preparation and means by which the GHC 83,271.00 figure was arrived was not established with any credibility and trustworthiness.

The said data printout or audit report from did not even constitute business records under section 125 of the Evidence Act for the starters, which would have made them an exception to the general hearsay rule. And as I said, they were not even tendered into evidence at the trial apart from them being merely filed.

In order to have constituted legally admissible and judicial evidence, the prosecution should have tendered them into evidence through any of the witnesses on oath. In the case of **Godka Group of Companies v. PS International Ltd** ***[2001-2002] SCGLR 918, the Supreme Court per Afreh JSC*** **(** as he then was) held as follows which applies to this case with equal force;

> ***"Judicial evidence must be given by witnesses who before they testify must take an oath or affirmation that they will speak the truth. Statements made without such oath or affirmation are not to be considered evidence: See s.61 of the Evidence Decree (NRCD 323).***
>
> ***Judicial evidence must be given by witnesses who before they testify must take an oath or affirmation that they will speak the truth. Statements made without such oath or affirmation are not to be considered evidence: See s.61 of the Evidence Decree (NRCD 323)….The attachment of a document to a pleading and marked "exhibit" does not fall into any of these exceptions to the general rule in s.61 of NRCD 323. The Court of Appeal therefore erred when it referred to the two documents attached to the statement of claim as evidence. They should have been excluded from the evidence by the Court of Appeal and should be excluded from evidence before this Court.***

The result was that they were hearsay evidence and consequently had no probative value in helping the court to establish that the Accused stole drugs worth exactly GHC 83,271.00. This distinction must be made clearly.

Nonetheless, the court finds that there was still some sufficient and considerable evidence that the Accused was seen on several occasions asking or giving orders to the PW2 to PW4 to package some assorted drugs into boxes which were sent out of the hospital premises to some unspecified destinations, albeit that the Accused had stated that one Dr. Kingsley Kwabi as the recipient.

Indeed, the record will show that the Accused failed to cross-examine the PW4- Asante Michael- after his testimony, which was that the had on multiple occasions asked him to package and sent out some boxes of assorted drugs out of the hospital.

In addition, the record shows that during the cross-examination of the PW1, PW2 and PW3 by the Accused, the witnesses were consistent and insistent in their identification of the Accused as the offender.

When witnesses such as the PW1, PW2, PW3 and PW4 testify in circumstances that they did and state that the one who had the caused the said boxes of assorted drugs out of the hospital is the Accused- then a court should be satisfied that there is enough and sufficient and quality evidence of the identity of the accused before it on the charge.

The law on the foregoing is that;

> ***"where the identity of an accused person is in issue, there can be no better proof of his identity than the evidence of a witness who swears to have seen the accused committing the offence charged". See the case of Adu Boahene v The Republic (1972) 1 GLR.***

Similarly, in the case of **Dogbe v. The Republic [1975] 1 GLR 118; at holden I, the High Court, per Ata-Bedu J (as he then was) stated thus:**

> ***"In criminal trials, the identity of the accused as the person who committed the crime might be proved either by direct testimony or by circumstantial evidence of other relevant facts from which it might be inferred by the court. Thus opportunity on the part of the accused to do the act and his knowledge of circumstances enabling it to be done were admissible to prove identity."***

The court had thus found at the close of the prosecution's case that even though the evidence had not shown or established the specifically stated worth or amount of drugs as misappropriated by the

Accused, however there had been established a prima facie case on the above-mentioned elements of the offence of stealing; to wit that the drugs belonged to the PW1 and his hospital (in other words that the Accused was not the owner of the assorted drugs); that the said drugs had been moved or taken out of the hospital by or at the direction of the Accused (appropriation); that the appropriation was done without the consent of the PW1 and the hospital or without any claim of right by the Accused and the intention to defraud the PW1 of the items.

In the case of ***Republic v Yiadom (2001-, 2002) 1 GLR 558, Quaye*** J (as he then was), held as follows, which I find applies to the facts of this case with equal force;

> ***"Where, therefore, such a person was not able to pay any money which he should have paid, that fact alone does not suffice to sustain a charge of stealing. However, where the person charged is established to have specifically misappropriated any money dishonestly, he can appropriately be charged and convicted of stealing. Whenever the prosecution succeeds in showing how the money got missing, the onus would shift onto the accused to offer an explanation. In this case the appellant did not offer any explanation…".***

At that stage therefore, there was a need for the Accused to give reasonable explanation for her actions and it did not matter the value or amount of drugs as long as part of the specific amount alleged is established. In that regard, as the trial judge, I am to consider the defence or explanations of the Accused; especially after the determination that there is a prima facie case against him. And that I am to answer if the explanation given by the Accused is reasonably probable or reasonably true and by extension if it raises a reasonable doubt in my mind as to her guilt.

In the case of **THE REPUBLIC v. FRANCIS IKE UYANWUNE [2013] 58 GMJ 162, C.A,** it was held per Dennis Adjei J.A that;

> ***"The law is that the prosecution must prove all the ingredients of the offence charged in accordance with the standard burden of proof; that is to say the prosecution must establish a prima facie case and the burden of proof would be shifted to the accused person to open his defence and in so doing, he may run the risk of non- production of evidence and/ or non-persuasion to the required degree of belief else he may be convicted of the offence. The accused must give evidence if a prima facie case is established else he may be convicted and, if he opens his defence, the court is required to satisfy itself that the explanation of the accused is either acceptable or not. If it is acceptable, the accused should be acquitted, and if it is not acceptable, the court should probe further to see if it is reasonably probable. If it is reasonably probable,***

> ***the accused should be acquitted, but if it is not, and the court is satisfied that in considering the entire evidence on record the accused is guilty of the offence, the court must convict him. This test is usually referred to as the three- tier test".***

The explanation or defence of the accused person appeared to be in three fold: First is that, the movement of the drugs in that manner, and especially to the Dr. Kwabi was a normal practice or arrangement between the hospital and Dr. Kwabi, which she had inherited from her predecessor, Anokyewaa Faustina. Secondly, she stated that the administrator was aware of her actions. Last but not the least, it was her defence that the stated amount of the allegedly stolen drugs had been exaggerated and that even if she stolen any drugs, they were only worth GHC 4,000.00.

In the considered opinion of the Court, inherent in the explanations or defence of the accused were some positive assertions which she was relying upon to raise some reasonable doubt concerning her guilt. These positive assertions were that her action was a normal practice or arrangement at the hospital; that the administrator was aware and that for every package of drugs sent out of the hospital, especially to Dr. Kwabi, they had been returned to the hospital stock either by physical replacement from Dr. Kwabi or in money worth which she used to purchase from the hospital's supply to restock same.

All these positive assertions of the Accused for her defence had been roundly denied by the prosecution witnesses. At that point therefore, I hold that the evidential burden had shifted unto the Accused, who was required to have called evidence to discharge the presumption of guilt against her at the close of case of the prosecution.

In other words, she was required to have called evidence to show the contrary that her actions were a practice at the hospital or a normal arrangement between the hospital and Dr. Kwabi that she carried out in good faith; that the drugs that were moved out were returned to the hospital and that the administration was aware of and had sanctioned her dealings with the Dr. Kwabi or any outsider to whom she had sent the drugs to so as to raise a reasonable doubt as to their guilt.

Those facts were not only capable of proof but were facts or matters peculiarly within the knowledge of the Accused, for which she was required to have called corroborative evidence of those positive assertions. They were facts or defences for her to prove and not for the prosecution.

For the law as was held **In R v Turner [1816] 5 M and S 206** at **211; per Bailey J (as he then was)** is that;

> ***"I am of the same opinion. I have always understood it to be a general rule, that if a negative averment be made by one party which is peculiarly within the knowledge of the other, the party***

within whose knowledge it lies, and who asserts the affirmative is to prove it, and not he who avers the negative".

Within our Ghanaian criminal jurisprudence, the above principle of law has been famously held in the case of **Salifu and Another v The Republic (1974) 2 GLR 291; where Ata-Bedu J (as he then was), held at holding 2 of the case thus;**

"The law, in cases where knowledge of a fact was peculiarly within the knowledge of an accused person a negative averment was not to be proved by the prosecution but on all the contrary, the affirmative must be proved by the accused as a matter of defence. If the first appellant said he had exhibit B as the written authority from the fourth prosecution witness then the burden of proving this, in the light of the above principle of law, lay on him and it was not for the prosecution to prove the negative…".

In ***ABODAKPI v. THE REPUBLIC; (Criminal Appeal No.H2/6/2007 dated 20th June 2008),*** the Court of Appeal, held that;

"…It is trite learning that ''where knowledge of a fact was peculiarly within the knowledge of the accused person a negative averment was not to be proved by the prosecution but on the contrary the affirmative must be proved by the accused as a matter of defence".

However, at the trial, the Accused failed to call any of the said persons or other pieces of evidence from which her assertions could have been established. For example, she did not call her predecessor, she did not call the administrator or any officer of the hospital. She also did not call the said Dr. Kwabi. She also failed to call credible, corroborative and admissible evidence that for each assorted drugs that went out from the hospital at her direction, same was returned to the hospital stock.

I hold that that was fatal to her defence and sounded the death knell to her statutory obligation to have called evidence sufficient enough to raise a reasonable doubt in the mind of the court about the probability of the existence of her disputed assertions. This is because those assertions that she has relied on for her defence were capable of proof by positive evidence beyond her mere assertions in court.

In the case of ***Majolagbe v. Larbi [1959] GLR 190*** Ollenu J (as he then was) held that when a party makes an averment in his pleading which is capable of proof in a positive way and the averment is denied, the averment cannot be sufficiently proved by just mounting the witness-box and reciting the averment on oath without adducing some corroborative evidence.

The same principle was applied and elucidated by the Court of Appeal in ***Zabrama v. Segbedzi [1991] 2 GLR 221***, where Kpegah JA (as he then was) delivering the lead judgment held at page 246 as follows:

> ***"... a person who makes an averment or assertion, which is denied by his opponent, has the burden to establish that his averment or assertion is true. And, he does not discharge this burden unless he leads admissible and credible evidence from which the fact or facts he asserts can properly and safely be inferred. The nature of each averment or assertion determines the degree and nature of that burden."***

In addition, her explanation during her cross-examination by the prosecution that even though the Asante Michael and others saw her move drugs out of the hospital but that she was not entitled or required to inform or show them to the said persons when the drugs were returned cannot be acceptable, especially as the witnesses had told her that moving drugs out of the hospital was not the normal practice at the hospital.

She had also stated that neither the accountant nor any other officer at the hospital was required to endorse the return of the drugs to the stock. If the witnesses who had seen the drugs moved out and other independent persons could not confirm that the drugs had been returned, then by what means would she have accounted for her actions, as same would have been susceptible to misappropriation, abuse and corruption.

Lastly, her explanation or statement- both in her unsworn statement and during the cross-examination that she only stole drugs worth GHC 4,000.00 cannot even be a valid defence in law for the offence of stealing. This is because it is the law that where a person is charged with stealing a certain amount it would be sufficient if the prosecution proved that he in fact stole part of that sum. See the case of ***Obeng alias Donkor and Others v The State (1966) GLR 259, SC.*** Therefore in this case, even if the Accused stole GHC 4,000.00- part of the GHC 83,271.00 as claimed by the prosecution- an offence of stealing has still been committed.

In the light of the above, I find the explanation of the Accused not reasonably probable or reasonably true; and further hold that she failed to raise a reasonable doubt in the mind of the court as to her guilt on the one count of stealing.

Consequently, I find and hold that the prosecution succeeded to prove beyond reasonable doubt that the Accused stole the assorted drugs of the PW1 and the Mpraeso General Hospital. The Accused is therefore convicted and found guilty on the one count of stealing.

SENTENCING:

In determining the appropriate sentence for the convict herein, I have had to consider the authority of ***Kwashie v The Republic (1971) 1 GLR 488,*** which provides for the factors to be considered by a court before imposing the length of sentence on a convict.

In that regard, I have taken into consideration the fact that the actions of the convict were premeditated and that she acted with rare dishonesty and corrupted her position at the hospital.

Nonetheless, the court has also taken into consideration mitigating factors such as the youthful age of the convict and her plea for leniency from the dock as well as similar pleas from her family in court.

The court has also taken into consideration the about two (2) weeks that she has spent in lawful police custody after her bail was revoked upon her conviction on 14th April, 2023 and pending the sentence on 27th April, 2023. See ***Article 14 (6) of the 1992 Constitution.***

Most importantly, the PW1 has confirmed in open court that the convict and her family have compensated him and the hospital with an amount of money and have also executed an installment payment plan to defray the balance. A copy of the agreement has been filed at the Registry of this court. PW1 even prayed the court to deal leniently with the convict.

To that end, the convict is hereby sentenced to pay a fine of one hundred (100) penalty units; or in default serve six (6) months imprisonment in hard labour. In addition, she is sentenced to execute a bond to be of good behaviour for twelve (12) months; or in default, she is to serve six (6) months imprisonment in hard labour without the option of a fine. It is hoped the convict would learn from this experience, reform and become a better person.

SGD:
H/H STEPHEN KUMI
(CIRCUIT JUDGE)..
s.k..