

IN THE CIRCUIT COURT HELD AT TARKWA IN THE WESTERN REGION ON
TUESDAY THE 21ST DAY OF FEBRUARY, 2023 BEFORE HER HONOUR HATHIA
AMA MANU, ESQ., CIRCUIT COURT JUDGE

COURT CASE NO. B7/23/21

THE REPUBLIC

VRS:

ERNEST AMPONSAH

JUDGMENT

Accused – Present.

Supt. Juliana Dadzie for Prosecution.

Bright Baiden for Accused person.

The accused person is charged with stealing contrary to section 124(1) of the Criminal Offences Act 1960, (Act 29). He pleaded not guilty.

The facts of the prosecution's case are that on 31st August, 2020, the Complainant sent the accused with GHC30,000.00 to be given to a witness in this case in exchange for gold. That the accused after delivering the money obtained 257.64 grams but upon his return gave the complainant only one piece of gold valued at GHC11,500.00. Prosecution alleges that the accused failed to account for the other two pieces of gold bars weighed at 222.75 grams valued at GHC70,000.00.

In his defence, the accused admitted received three (3) gold bars which were weighed as 257.64 grams but claims he does not know how pieces of the gold vanished from his pockets.

As this suit is criminal in nature the prosecution has the onus to prove its case beyond reasonable doubt, that the accused person:

- Was not the owner of the gold.
- The accused had dishonestly appropriated the gold.
- The appropriation was dishonest.

See the case of *LUCIEN VRS. THE REPUBLIC [1977] 1GLR 351*.

In the case of *AMPAH VRS. THE REPUBLIC 1977 2GLR 171*, the Appellant appropriated sums of money belonging to the Chamber of Mines, who were his employers. He was convicted of stealing. The Court in that case identified the elements of stealing as:

- (i) Dishonesty
- (ii) Appropriation and
- (iii) Property belonging to another person.

It is incumbent upon prosecution to prove each of the above ingredients of the offence beyond reasonable doubt as stipulated by Section 11(2) of the Evidence Act, 1975 (NRCD 323). The 1992 Constitution of Ghana at all times has the right of its citizenry at heart thus although the overall wellbeing of the community especially in maintaining peace and order is essential, an accused person is legally presumed innocent until proven otherwise. Failure on the part of prosecution to prove all of the ingredients mentioned by the requisite degree would lead to an acquittal. The accused on the other hand is expected to raise a doubt as to his guilt.

See the case of **COMMISSIONER OF POLICE VRS. ANTWI 1961 GLR 408**.

Prosecution called two witnesses although three witness statements were filed. The prosecution's first witness was the investigator. Its case rested on the witness statement filed as well as the investigation cautioned statement and charged statement of the accused. These witnesses were questioned extensively by the accused's Counsel

on whether he even saw the gold which accused presented to the complainant to which he answered in the negative. Again when asked if he retained a copy of the photographs showing the gold said to have been given to the accused, he said no. One is left to wonder, what evidence except the claims of the complainant did this investigative officer rely on in his work? Even the requisite license to prove the complainant was/is a legitimate businessman was not retained. Obviously relying on his exhibits, PW1 did not conduct further investigations to ascertain if the accused dishonestly appropriated the complainant's gold.

Unfortunately for the prosecution, its trump card which is the statement of the accused did nothing for the prosecution's case. The investigative officer (PW1) did not trace the steps of the accused to establish an event time analysis from which the Court could be convinced that the accused dishonestly appropriated the gold. The prosecution's key witness did not give evidence and due to the incomplete investigation done by PW1, prosecution was unable to establish whether the accused arrived in the office and waited for complainant what time he eventually met the complainant and even if indeed he was just about to be sent on another errand when he observed that the gold bars were lost.

Prosecution also called the individual who gave the gold to the accused a witness. As the fact that accused had received three (3) bars of gold was not in contention, the Court finds that this witness's evidence did not do much to satisfy the burden on prosecution. In fact the only evidence of this witness (PW2) which was essence was the fact that he claimed the accused put the wrapped gold in his bag and not his pocket.

Again, another failure of PW1 to find or investigate this claim is evident on record as his evidence does not mention if this bag was even found. PW1 in the course of his work did not even find out whether the accused came to the office with the bag in fact

his arm chair investigation has led more questions than answers on the evidence presented. From the evidence adduced, the prosecution proved only that the accused received the gold but the evidence to establish that his dishonestly appropriated same is scanty.

As stated in the famous case of *STATE VRS. ALI KASSENA (1962) 1 GLR 144*, a multitude of suspicion put together cannot constitute proof. The prosecution failed to put before this Court any piece of evidence that is more than suspicion that accused had dishonestly appropriated the gold.

In *REPUBLIC VRS. AKPABIO (1944) 10 WACA 181*, the appellant was entrusted with certain sums of money which were supposed to be paid into a fund. He failed to pay them into official coffers or to enter the sums into the official records for a very long time. He was charged with stealing. The Court held that, mere retention of a sum of money for a long time did not amount to stealing by conversion because there was no proof of intent to defraud.

The Court in *C. O. P. vrs. Gaituah 1961 GLR 789*, Supreme Court found the accused not guilty as he was found not have any animus furandi (intent to steal) because he did not know that he was not entitled to the excess salary arrears therefore his appropriation was not dishonest.

In the instant case, I find that prosecution's burden has not been effectively discharged so the charge must fail for as BENJAMIN FRANKLIN said, "It is better a hundred guilty persons should escape than one innocent person should suffer". Accused is acquitted and discharged.

(SGD.)

H/H. HATHIA AMA MANU, ESQ.

(CIRCUIT COURT JUDGE)

