

IN THE CIRCUIT COURT HELD AT TARKWA WESTERN REGION ON WEDNESDAY THE 20<sup>TH</sup> DAY OF JULY, 2023 BEFORE HER HONOUR HATHIA AMA MANU, ESQ. CIRCUIT JUDGE.

---

---

COURT CASE NO. B7/34/20

THE REPUBLIC

VERSUS

DANIEL MUNIFIE

---

**JUDGMENT**

---

Accused – Present.

C/Insp. Adams Mumuni for Prosecution.

The Accused person is a former District Manager of Fludor Ghana Limited stands before this Court charged with one count of stealing, *Contrary to Section 124 of the Criminal Offences Act as amended by paragraph 64 of NLCD 398/69*. The summary of the facts leading to the instant case are that during the year of 20<sup>th</sup> August, 2019, accused received an amount of GH¢6,604,800.00 from the company to purchase 13,904 bags of dried cocoa beans for the company. That after delivering 13,088 bags to the company, he failed to account for 816 bags. That upon accused person's arrest and subsequent prosecution in this court, he paid GH¢4,120.00 being the equivalent of 8 bags of dried cocoa bean leaving an outstanding balance of GH¢420,240.00 which is the value of 806 bags.

The accused denied the charge against him. The ingredients of the offence which the prosecution must prove beyond reasonable doubt under *Sections 11 (2) and 13 (1) of the Evidence Act* can be gleaned from the above mentioned provisions. The charge of

stealing requires prosecution to establish that the accused has appropriated a thing (in this case cocoa bags) of which the accused is not the owner.

The Court in the case of *Ampah Vrs. The Republic [1977] 2GLR 171* identified that elements of stealing as (i) Dishonesty (ii) Appropriation and property belonging to another person.

Prosecution's first witness (PW1) was the Sector Manager of the Complainant's Company. He stated that the accused is a friend whom he recommended to the Company. That when he took over from the previous sector manager Yahaya Mohammed (deceased) he was informed of accused inability to account for some cocoa bags and together with the deceased Yahaya Mohammed the matter was reported to the police. The accused asked this witness if he remembers that Yahaya Mohammed took money from him but did not pay back. The witness responded that they heard about that but the cocoa was given and evidence of same shown to the police.

Again, the accused asked if the witness could show him the week of the debt but PW1 answered in the negative and stated that "we give money weekly, but the company has different times for checking how much cocoa has been pushed. Until it is done one cannot detect anomalies.

Studying the evidence of PW1 and the responses given to question asked I find that, none of the question asked disputed the evidence presented. Again, accused asked about refund of money which is totally out of place because accused stands charged for failing to deliver cocoa bags per the amount he received, therefore a cash debt owed to him has no nexus with the matter at hand unless he is seeking to claim that instead of buying the cocoa he gave the money out as a loan. In any case he did not mention the specific amount, Yahaya Mohammed allegedly owes him.

Prosecution's next witness was the investigative officer. The officer tendered his witness statement into evidence as he prayed to rely on same. He also tendered into evidence Exhibit A (being statement of Yahaya Mohammed), A Fludor Ghana Limited opening and closing accounts for the accused, *Exhibit B (statement of Agyekum Job and Exhibit C series (C – Cautioned Statement of accused and C1 – Charged Statement of Accused).*

*The Accused Cross-Examined as follows:*

“Q. My boss gave me money for cocoa do you know about that.

A. No my Lord.

Q. the money was for 660 bags of cocoa beans.

A. No it was for 860 bags of cocoa.

Q. Are you aware he took 16 bags money from me that same was the commission of the one who brought the cocoa?

A. No.

Q. Are you aware I had a meeting with Yahaya to bring evidence of the 660 bags of cocoa?

A. No.

Q. Are you aware there was a misunderstanding so he got angry and left?

A. No.

Q. Are you aware he fought with me at my warehouse?

A. No.

Q. Are you aware he laid me off work out of anger and took the keys from me?

A. No.”

Considering the evidence presented by this witness, the accused person's questions did nothing to punch holes in the evidence against him. Analyzing the exhibits attached and marked as Exhibit “A” is a police statement which was given by the

accused person's previous manager, the same person that he has been trying by way of cross-examination to implicate for the short comings. This deceased person before his demised filed the present complaint jointly with another (PW1) to initiate this criminal process against the accused yet accused person did not refute it. Exhibit "A" gives a clear breakdown and same was not questioned by the accused. In Exhibit C1, which is the accused charged statement, he admitted that he owes the company 816 bags and that was pleading for time to pay off the outstanding bags. Exhibit C was duly executed as there is the presence of a jurat indicating that his statement was read to him in Twi in the presence of Samuel Adu-Amponsah. Again, the accused never raised any objection to the tendering of this document and in the mind of the court this serves as an undisputed statement by the accused the charge of stealing levelled against him.

In the case of *Ofori Vrs. The State [1963] 2 GLR 452*, the Supreme Court held that a free and voluntary confession of guilty by an accused person, if it is direct and positive and is duly made and satisfactorily proved, is sufficient to warrant a conviction without any corroborative evidence.

*During cross-examination of PW2 (the investigative officer), the accused asked him the following questions:*

"Q. My boss gave me money for cocoa do you know about that.

A. No my Lord.

Q. the money was for 660 bags of cocoa beans.

A. No it was for 860 bags of cocoa.

Q. Are you aware he took 16 bags money from me that same was the commission of the one who brought the cocoa?

A. No.

Q. Are you aware I had a meeting with Yahaya to bring evidence of the 660 bags of cocoa?

A. No.

Q. Are you aware there was a misunderstanding so he got angry and left?

A. No.

Q. Are you aware he fought with me at my warehouse?

A. No.

Q. Are you aware he laid me off work out of anger and took the keys from me?

A. No.”

Apart from this line of questions and answers, I studied Exhibit “B” extensively and observed that accused indicated that he had some staff working under him who used his account to access funds with the intention of buying cocoa but they failed to do same causing his initial owed bags of 635 to increase to 819 bags of cocoa.

In my opinion, the prosecution established a prima facie case and the accused was given the chance to open his defence in a bid to create doubt in the mind of the court as to his guilt.

In his defence the accused stated that his boss took money for 660 bags of cocoa and that after 1 week he had finished buying the cocoa and he (the accused) asked for documents to same but it was not given to him. Accused alleges that his boss brought new books which they did not agree on so he was brought to court. The accused caused the court to serve Augustine Afful with a witness summons. The accused ended up praying the court to be allowed to treat him as a hostile witness.

As the statement was not the soled evidence presented by Prosecution and the accused did not raise any objection to it being tendered, the court found no reason to probe further.

Although the accused had initially stated that he intended to call his father as a witness, he prayed the court to serve Augustine Afful a staff of the company with witness summons. He also prayed the court to cause the prosecution to serve him with additional exhibits to better prepare his defence. The Court granted his prayer and upon same being filed, the court admitted it and maintained the marking on the exhibits as stated on the notice of filing of documents.

*Accused cross-examined as follows:*

“Q. Give your name to the court.

A. My name is Augustine Afful.

Q. What work do you do?

A. I am Operations Officer at Fido Ghana Ltd.

Q. Do you know the accused?

A. Yes. I used to work with accused, he was a franchise owner. All I know is that he misappropriates some money given to him which he was appropriate. My lady the money he was talking about was used to buy cocoa for his district.

Accused: I want to treat the witness as a hostile witness.

Q. In 2018, I gave money for 630 bags of cocoa for Yaya Mohammed but we did know that is what has become an issue in court are you aware.

A. The money for 630 bags were bought and I was there when it was given. The cocoa was only dispatched and you even saw the way bill.

Q. I put it to you that Yaya Mohammed did not buy the cocoa.

A. The Quality Control waybills showed the cocoa had been dispatched that is not possible if the cocoa is not bought.

- Q. Until date the Quality Control trading certificate and waybill were not given to me.
- A. My Superior told me those documents are on record in the court.
- Q. What you told me before taking money to buy cocoa in my name and later it turned out to be false.
- A. All I know is what I have said and it is a fact.
- Q. I put it to you that the document you brought does not have my name so I will not accept it.
- A. I explained that due to the cocoa's jurisdiction it could not have been in your name.
- Q. We did not agree on that so I do not accept it.
- A. It is a fact."

In entering a defence, an accused is expected to provide evidence or raise some level of doubt in the mind of the court. As at the time accused was given the platform to be heard it was established that accused was owing bags of cocoa and had failed and refused to account for same. That the accused has misappropriate the amount given to him to purchase the cocoa. The accused person's defence presented to the court with no factual or evidence upon which questions or the established evidence of prosecution could be questioned.

To this end I hereby convict the accused person on the charge of stealing. Accused before I sentence you, is there anything you would like to tell the court?

Mitigation: I beg the Court I want to be given time, like 10 years to pay.

By Court: Accused how old are you?

Accused: I am 35 years my Lord.

Prosecution: My Lord we have no aggravating factors we are in your hand.

BY COURT: In sentencing the accused, I have considered the fact that the accused person is a first time offender. I have also considered accused person's prayer to be given time to pay. Accused is sentenced to pay a fine of 1,000 penalty units, in default he will serve 7 years imprisonment. Accused is to be given an outstanding sentencing of one day. Accused is to pay the current value of 806 bags of cocoa (estimated at GHC646,400.00) by June. Payment is to start effective August, 2023 to January, 2024.

**(SGD.)**

**H/H. HATHIA AMA MANU (MRS.)**

**(CIRCUIT COURT JUDGE)**