

**IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA AT CIRCUIT COURT '2' ON WEDNESDAY, 5<sup>TH</sup> JULY, 2023 BEFORE HIS HONOUR ISAAC ADDO, THE CIRCUIT COURT JUDGE**

**CASE NO. D4/07/2023**

**THE REPUBLIC**

**VRS**

**BENJAMIN ODOOM**

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ACCUSED PERSON PRESENT

CHIEF INSPECTOR JONAS LAWER FOR THE REPUBLIC PRESENT

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**JUDGEMENT**

The Accused person was first arraigned before this Honourable Court on the 18<sup>th</sup> August, 2022, charged with the offence of Stealing contrary to section 124(1) of the Criminal Offences Act, 1960 (Act 29). The Accused person pleaded Not Guilty to the charge when same was read and explained to him.

**THE FACTS OF THE CASE**

The complainant is a businesswoman and manager at SUAIS Enterprise located at Ablekuma. The Accused person was a loan officer of the same company. In June, 2022, the company gave the Accused person fuel coupons valued at GH¢25,000.00 to go and sell to their customers and render accounts. The Accused person after collecting the coupons went into hiding and failed to report to office. Efforts made by the complainant to trace the Accused person failed. On the 5<sup>th</sup> August, 2022, a complaint was lodged with the police. On the 15<sup>th</sup> August, 2022, the Accused person was arrested at his hideout. In his investigation cautioned statement, the Accused person admitted selling the coupons to a fuel filling

station at the cost of GH¢16,400.00 and appropriated the cash. Subsequently, the Accused person was charged and arraigned before this court.

The prosecution in discharging the burden placed upon it called two (2) witnesses as PW1 and PW2.

PW1 (Ismail Hukportie) told the court that he employed the Accused person in June, 2022 as a Sales Boy for the company. That his duties were to sell fuel coupons to drivers at various lorry stations and then render sales to the company. It is the case of PW1 that between the period of 24<sup>th</sup> May, 2022 and 2<sup>nd</sup> August, 2022, coupons worth GH¢110,660.00 were given to the Accused person to supply. The Accused person brought GH¢85,660.00 out of GH¢110,000.00 leaving a balance of GH¢25,000.00. That when the Accused person was asked about the GH¢25,000.00, he said he sold the coupons to a fuel filling station and made use of the money. PW1 tendered in evidence the Sales Book without any objection.

PW2 (Detective Chief Inspector David Anaba) investigated the case. PW2 relied on his Witness Statement as his Evidence-In-Chief and tendered in evidence the Cautioned and Charge Statements of the Accused person without any objection.

After the close of the case of the prosecution, this Court determined that a prima facie case had been made out against the Accused person. As enjoined by law, the Court invited the Accused person to enter into his defence.

### **THE CASE OF THE DEFENCE**

The Accused person in opening his defence testified himself and called no witness. The Accused person told the court that he was a loan officer at SUAIS Microcredit, and was employed in April, 2022. That in the appointment, he was to distribute fuel coupons and also collect the loans given to the customers on instalment basis. In the appointment letter, he was to be paid GH¢500.00 per month, and would also pay his transportation whenever he goes to distribute coupons. The Accused person further told the court that the policy of the company was that after a week of giving out the coupons, you go for the money a week later. That, somewhere in May, 2022, fuel prices went up and the drivers always gave him excuses that they were having challenges with their vehicles. According to the Accused person, he agreed with management that anyone who owed will not be given fuel coupons again and so all the driver agreed. It is the case of the Accused person that, in June, 2022, fuel prices went down so he got more drivers taking the fuel coupons and went for the moneys later. The Accused person added that on the 29<sup>th</sup> June, 2022, he faced challenges on the field again. The drivers were not paying regularly so his boss asked that he suspended the giving out of fuel coupons and collect the debt. That when he went for the money, the customers complained of problems with their cars, as well as problems at the lorry stations. On the 29<sup>th</sup> June, 2022, he got an amount of GH¢2,000.00 instead of GH¢3,850.00 and sent it to his boss via mobile money, and went to the office to render accounts. That his boss was not happy with that and asked him to go for the money. The Accused person again, told the court that the drivers gave him excuses but his boss disagreed with him. According to the Accused person, he told his boss to call the customers but he told him he did not know them and that he knew him as the one who supplied the fuel coupons and so he will hold him responsible. On the 4<sup>th</sup> August, 2022, the Accused person told the court that he called his boss one morning that he will go to the field to

tackle them for money. That when he got to the field, he did not meet the drivers and so he informed the station masters who promised to collect the money for him. The Accused person said on the 5<sup>th</sup> August, 2022, he set off early and started at Ablekuma Curve and got GH¢110.00 each from two (2) people but the rest could not make payment. That, later, he was accused of stealing GH¢50,000.00 and the drivers were alerted to cause his arrest when seen. Later, the station officer and others arrested him, harassed him and took his bag containing GH¢220.00. The Accused person stated that it was not true that he stole GH¢25,000.00. To the Accused person, the outstanding coupons is worth GH¢1,160.00 without profit.

The legal issue that emerged for determination in this case was whether or not the Accused person dishonestly appropriated the sum of GH¢25,000.00 belonging to SUAIS Enterprise.

### **BURDEN OF PROOF**

The requirement of the law per Article 19 (2) (c) of the 1992 Constitution is that a person charged with a criminal offence is presumed innocent until he is proved guilty or he pleads guilty. The article reads:

*(2) "A person charged with a criminal offence shall -*

*(c) be presumed to be innocent until he is proved or has pleaded guilty"*

The burden of proof in a criminal action therefore totally rests on the prosecution. The mandatory requirement that the guilt of the person charged ought to be established beyond reasonable doubt and the burden of persuasion on the party claiming that a person was guilty, has been provided for in sections 13 and 15 of the Evidence Act, 1975 (NRCD 323). Significantly, whereas the

prosecution carries that burden to prove the guilt of the accused beyond reasonable doubt, there is no such burden on him to prove his innocence. At best he can only raise a doubt in the case of the prosecution. But the doubt must be real and not fanciful.

In the case of Republic v. Adu-Boahen & Another [1993-94] 2 GLR 324-342, per Kpegah JSC, the Supreme Court held that:

*“A plea of not guilty is a general denial of the charge by an accused which makes it imperative that the prosecution proves its case against an accused person ..... When a plea of not guilty is voluntarily entered by an accused or is entered for him by the trial court, the prosecution assumes the burden to prove, by admissible and credible evidence, every ingredient of the offence beyond reasonable doubt”.*

### **THE LAW AND EVALUATION OF THE EVIDENCE**

Section 125 of Act 29 defines stealing as follows:

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

In the case of The State vs. W. M. Q. Halm and Aryeh Kumi Crim. App Nos. 118/67 and 113/67, 7 August, 1969; (1969) CC155, the court per Akufo Addo, C.J., Ollennu, Apaloo, Amissah JJ.A and Archer J stated the three essential ingredients which prove a charge of Stealing under our criminal law as:

*“(i) That the person charged must not be the owner of the thing allegedly stolen;*

*(ii) That he must have appropriated the thing;*

(iii) *That the appropriation must have been dishonest.*" See also Lucien v. The Republic [1977] 1 GLR 351-359 at holding 2.

On the part of the defence, that is the Accused person, all that he needs to do by way of producing evidence is to raise a doubt as to his guilt. Woolmington v Director of Public Prosecution [1935] AC 462 is the locus classicus on this principle where the Appeal Court of England per Sankey LC expressed the view that:

*"..... while the prosecution must prove the guilt of the prisoner, there is no such burden laid on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the jury of his innocence."*

There is no dispute about the fact that the monies, the subject matter of the crime belong to the complainant's company (SUAIS Enterprise). It is clear from the definition that a person cannot be guilty of Stealing unless he is proved to have appropriated a thing in the first place.

Section 122 (2) of the Criminal and Other Offences Act, 1960 (Act 29) defines Appropriation as follows:

*"An appropriation of a thing in any other case means any moving, taking, obtaining, carrying away, or dealing with a thing, with the intent that some person may be deprived of the benefit of his ownership, or of the benefit of his right or interest in the thing, or in its value or proceeds, or any part thereof".*

The prosecution's task therefore is to adduce evidence beyond reasonable doubt that the Accused person herein appropriated his employer's funds with the intent to deprive SUAIS Enterprise of the benefit of its ownership of those monies, the subject matter of the charge of stealing. In other words, the Accused

person dishonestly appropriated the monies of SUAIS Enterprise entrusted to him as its employee who was tasked to supply fuel coupons to its customers and render accounts accordingly.

PW1 supported his oral evidence with the Sales Book as documentary evidence which entries in respect of this case covers the period 17<sup>th</sup> June, 2022 to 2<sup>nd</sup> August, 2022. The Sales Book was tendered in evidence and its pages were marked as Exhibit 'A' series. During cross examination of the Accused person by the prosecution on the 27<sup>th</sup> June, 2023, the Accused person confirmed to the Court that the markings/crosses accompanied with signatures are sales accounted for. For the avoidance of doubt, the following is part of what transpired when the Accused person was cross examined:

*"Q. Have a look at Exhibit 'A' Series. Open to 1<sup>st</sup> July, 2022. Look at the last but one column. Have you seen how many cross markings?*

*A. Two (2).*

*Q. That two will amount to how much?*

*A. GH¢440.00. I accounted for this.*

*Q. When you account for a coupon it is ticked, you agree.*

*A. Yes, My Lord.*

*Q. They also sign against it.*

*A. Yes, My Lord."* (Emphasis mine)

In the Cautioned and Charge Statements of the Accused person given to the police on the 5<sup>th</sup> and 15<sup>th</sup> August, 2023 and marked as Exhibits 'A' and 'B' respectively, the Accused person denied dishonestly appropriating moneys belonging to SUAIS Enterprise. In his evidence in open court, the Accused

person told the Court that an outstanding amount of GH¢1,160.00 without profit was the money he was unable to account. This, according to the Accused person under cross examination, was that he could not trace the whereabouts of the customers he supplied the fuel coupons to.

A careful scrutiny of Exhibit 'A' Series indicates that an amount of GH¢9,400.00 was unaccounted for and not GH¢25,000.00 as stated by the prosecution. During the trial, the prosecution and defence continuously kept on mentioning profits/interest on the fuel coupons issued to the Accused person. Surprisingly, neither the prosecution nor the defence explained to the Court how these profits/interests were arrived at. In the case of Obeng alias Donkor & Others v. The State [1966] GLR 259-261, S.C. per the judgment of Crabbe JSC (as he then was) at page 261, stated as follows:

*"Therefore, where a person is charged with stealing a certain sum, it is sufficient if the prosecution proves that he in fact stole part of that sum".*

From the evidence adduced at the trial, it is established that the Accused person was not able to account for the sum of GH¢9,400.00 belonging to SUAIS Enterprise thereby depriving the Company of the use or benefit of the money.

From studying the entirety of the evidence adduced at the trial and from the analysis I have made so far, I do not hesitate in stating that the prosecution adduced sufficient evidence in proof of the charge of Stealing against the Accused person. The essential facts that point to the guilt of the Accused on the charge of Stealing have been proved by the prosecution beyond reasonable doubt. The defence or explanation of the Accused person is infantile and an afterthought and does not throw any doubt on the evidence on record.



In line with the above, I find the Accused person herein guilty of the offence of Stealing, and he is accordingly convicted.

**SENTENCING:**

In sentencing the Accused person herein, I take into consideration of the fact that he is a first-time offender and also a young man. I have also considered the fact that he has been in police lawful custody for some period because his bail was revoked when he jumped bail. However, to serve as deterrent to others, the Accused person herein is hereby sentenced to serve a prison term of Six (6) months In Hard Labour.

.....  
**ISAAC ADDO**  
**CIRCUIT JUDGE**  
**5<sup>TH</sup> JULY, 2023**