

CORAM: HER HONOUR SEDINAM AWO BALOKAH (MS.), JUDGE,  
SITTING AT THE CIRCUIT COURT 2, ADENTAN, ACCRA ON THE 20<sup>TH</sup>  
DAY OF JUNE, 2023

CASE \_\_\_\_\_ NO.

D7/080/2023

THE REPUBLIC

VRS.

DAVID TAWIAH

ACCUSED

PERSON

..... PRESENT

C/INSPR.

LANYO

FOR

PROSECUTION

..... PRESENT

PRO SE REPRESENTATION FOR ACCUSED PERSON

JUDGMENT

The Accused Person has been charged as follows;

- a) Unlawful Entry under section 152 of the Criminal and Other Offences Act, 1960 (Act 29)
- b) Stealing under Section 124(1) of Act 29.

On the 10<sup>th</sup> day of November 2022 when the Accused Person was arraigned before this Court, he pleaded **NOT GUILTY** to the offences charged in Ewe, his language of choice for his trial.

The brief facts presented by the Prosecution in support of the charges leveled against the Accused Person were inter alia that, the Accused Person, a 19-year-old unemployed young man, broke into the Complainant, Gideon Amedzenu, a Civil Servant's home at Mensah-Bar, a suburb of Accra within the jurisdiction of this Court and stole 93 bundles of Electrical Cables valued at GHC68,768.00. According to the Prosecution, the Complainant who works in Main Accra, due to fuel economic stress, would spend weekdays in Accra and weekends at the home at Mensah-Bar. The Complainant on 15<sup>th</sup> October 2022 arrived at his home at Mensah-Bar to see that his home had been broken into and most of his valuables including jewelries and 93 bundles of Electrical Cables had gone missing. After he reported the break-in and theft to the Police and during investigation of same, it came to light that the Accused Person was seen on a motor-bike carrying a quantity of Electrical Cables away to sell off as scrap at a location at Dodowa. The Accused Person was arrested upon intelligence. According to the Prosecution, the Accused Person admitted stealing 15 bundles of Electrical Cables from the Complainant's home and further admitted selling same to one Muniru at Dodowa. The Police tried to have Muniru arrested but were unsuccessful.

Now, the burden on the Prosecution is to prove the offences charged beyond a reasonable doubt (**see Section 13(1) of The Evidence Act, 1975 (NRCD 323)**). Further, the burden of producing evidence, when it is on the Prosecution as to

the facts essential to guilt, requires the Prosecution to produce sufficient evidence so that on all the evidence provided, a reasonable mind could find the existence of a fact beyond a reasonable doubt (**see Section 11 (2) of NRCD 323. See also Fuseini vs. The Republic (J32 of 2016 [2018] GH ASC 35 (6 June 2018), Tetteh vs. The Republic [2001 - 2002] SC GLR 854, Dexter Johnson vs. The Republic (2011) 2 SC GLR 601, Frimpong A.K.A Iboman vs. The Republic [2012] TSC GLR 297, Logan and Laverick vs. The Republic (2007 - 2008) SC GLR 76).**

### **The Case of the Prosecution**

The Prosecution presented its evidence through 3 Witnesses including the Complainant. The evidence of the first Prosecution Witness (PW1) who is the Complainant, Gideon Amedzenu, through his Witness statement, was that he knows one Godfred Etse who lives in the neighborhood of his home at Mensah-Bar. He testified that on 15<sup>th</sup> October 2022 at around 1:20 p.m, he returned from Accra to his home at Mensah-Bar and realized that the door to the main house was open. He entered the rooms in the house and saw that the rooms had been totally ransacked. His wife's jewelry, clothes and other valuable items as well as bundles of Electrical Cables worth GH¢68,768.00 which he had kept in the store room in the garage had been stolen. He informed his neighbours about the incident and reported the case to the Police. His neighbour, Godfred Etse who operates an Okada Business at Mensah-Bar alerted him that on 12<sup>th</sup> Day of October, 2022, he had picked up a young man he later identified as the Accused Person herein, and dropped him off at Dodowa Zongo with bundles of new Electrical Cables. The Police were thus informed and the Accused Person was arrested upon identification of him by the said Godfred Etse. The Accused

Person, although given the opportunity to cross-examine PW1, declined to do so. He assured the Court that he did not wish to cross-examine PW1.

The evidence of the second Witness for the Prosecution (PW2), Godfred Etse, through his Witness statement is that he lives in the same neighborhood with PW1 and that he operates an Okada Business (Commercial Motorbike Transport Business). He testified that on 15<sup>th</sup> October, 2022, at about 3pm on his way home, he heard people in the neighborhood talking about a theft case involving the stealing of PW1's Electrical Cables that were new. He testified that he suspected the Accused Person herein of committing the crime complained of because during that week, he (PW2) had picked Accused Person up as a customer and that the Accused Person had with him bundles of new Electrical Cables. He further testified that he dropped the Accused Person off at a scrap yard at Dodowa. Thus, PW2 informed PW1 about his encounter with the Accused Person and same information was given to the Oyibi Police. Upon PW2's arrival at the Oyibi Police Station to assist the Police investigate the case, he spotted the Accused Person and identified him as the man with the new Electrical Cables he had dropped off at a scrap yard at Dodowa. The Accused Person has been arrested for another offence and was at the Police Station perchance. The Accused Person in his cross-examination of PW2, put it to PW2 that on the day PW2 picked him up, he had with him bundles of wire and pieces of iron rod and not new Electrical Cables. PW2 denied his assertion. This ensued;

**Q:** Did you see what was in the sack I was holding?

**A:** Yes, when we got to Dodowa Scrap, you opened the sack and I saw Electrical Cables.

The Court sought to ascertain if PW2 knew the difference between bundles of wires and Electrical Cables thus;

**By Court:**

Do you know the difference between bundles of wires and Electrical Cables?

**A:** Yes, the bundle wires are not in insulating rubber but electrical cables are in insulating rubber and that was what was in the Accused Person's sack which he opened.

**By Court:**

Were they old Electric Cables or brand new?

**A:** They were brand new Electrical Cables.

The case investigator who was the third Witness presented by the Prosecution (PW3) testified that after the Complaint of break in and stealing was referred to him on 15<sup>th</sup> October, 2022 for investigation, the Accused Person who had been arrested and brought to the Oyibi Police Station was identified by PW2 as the man he had given a ride on his Okada some days earlier. PW3 testified that PW2 confirmed that he did carry the Accused Person to a scrap yard at Dodowa where the Accused Person opened the sack he was carrying and PW2 saw new Electrical Cables in the sack; Thus the Accused Person became PW3's Suspect for the offences PW1 had lodged the complaint about. PW3 relied on photographs he took upon visiting the alleged crimes scene (**see Exhibit A, A1 and B**). PW3 further relied on the Investigation Cautioned Statement he obtained from the Accused Person (**Exhibit C**), as well as the Charge Statement (**Exhibit D**). In **Exhibits C and D**, the Accused Person is said to have admitted breaking into PW1's home at Mensah-Bar and stolen 15 bundles of Electrical Cables. Accused Person is said to have denied stealing any other item from PW1's home (**see Exhibits C and D**). The Accused Person in **Exhibits C and D** admitted selling the

15 bundles of Electrical Cables to one Muniru at the Dodowa scrap yard for GH¢1,200.00. PW3 testified that attempts had been made in order to effect an arrest of the said Muniru. However, PW3 said in his testimony that he was not successful in his attempts to arrest Muniru. The Accused Person in his cross-examination of PW3 put it to PW3 that the content of **Exhibits C and D** are not what he told PW3 to write down for him. This, PW3 denied. This was the totality of the Prosecution's case.

Upon a consideration of same by the Court, the Court ruled that the Prosecution had successfully established a prima facie case against the Accused Person with regards to the two charges of Unlawful Entry and Stealing. The Accused Person was thus called upon to;

- a) Put up a Defence by testifying or
- b) Remain silent or
- c) Make unsworn statements from the dock as he pleases.

The Accused Person on the 21<sup>st</sup> day of March 2023 indicated to the Court that he elects to remain silent. On the 20<sup>th</sup> day of June 2023, the Accused Person confirmed his 21<sup>st</sup> March, 2023 choice to remain silent; thus leaving the Court to adjudge the case based on the evidence presented by the Prosecution. In doing so, the Court must consider the facts in evidence as presented by the Prosecution in support of the two (2) charges; Unlawful Entry and Stealing in light of the elements of the two (2) offences which require proof beyond a reasonable doubt. The charge per Count 1 is one of Unlawful Entry.

**Section 152 of Act 29** states that *a person who unlawfully enters a building with the intention of committing a criminal offence in the building commits a second degree felony.*

Further, **Section 153** explains the offence of Unlawful Entry as a *situation where a Person enters otherwise than in the exercise of a lawful right, or by the consent of any other person able to give the consent for the purposes for which that person enters.*

The evidence of the Prosecution through its 3 witnesses and especially **Exhibits C and D** considered together, show that before the Accused Person could have even stolen the 15 bundles of Electrical Cables he admitted he stole from PW1's home, he needed to have entered PW1's home to do so.

The question therefore is this; was the entry of the Accused Person into PW1's home a lawful one or an unlawful one? The Accused Person is not known to PW1. PW1 has not given the Accused Person his consent to enter the home in issue. The only logical conclusion one can reasonably reach in the circumstances is that the Accused Person's entry into PW1's home in order to steal the 15 bundles of cables he admits he stole was an Unlawful Entry. The law per **Section 13(2)** and **Section 11(3) of NRCD 323** requires that the Accused Person raise only a reasonable doubt as to his entry into PW1's home. However, even in the absence of any evidence on the side of the Accused Person, the question remains as to whether or not, there can be found on the mind of the Court, a reasonable doubt as to the Prosecution's evidence that the Accused Person's entry into PW1's home is unlawful. In answer to this question, the Court considered the purpose for which the Accused Person entered PW1's home. The Accused Person admits having stolen 15 bundles of electrical cables from PW1's home (**see Exhibits C and D**). The Court can only reach one irresistible conclusion, which is

that the Accused Person entered PW1's home in order to steal. This being the case, there exists no reasonable doubt as to the fact that the Accused Person's entry into PW1's home was unlawful.

In the circumstances, the Court finds that the Prosecution has successfully proven that the Accused Person did, Unlawfully Enter PW1's home in order to steal 15 bundles of electrical cables belonging to PW1.

The Accused Person is therefore found **GUILTY** of the offence of Unlawful Entry per **Section 152 of Acts 29**.

The Accused Person is accordingly **CONVICTED** of same.

With regards to the second Count (Count 2) which is a charge of the Stealing of 93 bundles of new electrical cables, reference is made to **Sections 124(1), 120(1)(b) and (2), 123(3) and 125 of Acts 29 (see the said sections of Act 29)**.

Now, the evidence of the Prosecution through all 3 Witnesses when considered together establishes the following facts and I find same;

1. The fact that the Accused Person was seen carrying away bundles of New Electrical cables and taking them to a scrap yard at Dodowa to sell to one scrap dealer, Muniru (see the testimonies of PW2 and PW3 and **Exhibits C and D**).
2. The fact that the Accused Person admits Stealing 15 bundles of new Electrical Cables from PW1's home at Mensah-Bar, and selling them to a scrap dealer called Muniru at Dodowa scrap yard for GH¢1,200 (see **Exhibits C and D**).



3. The fact that PW1's home was broken into and bundles of new Electrical Cables belonging to him were stolen (see the testimony of PW1 via his Witness Statement).

Upon the above facts found from the evidence on record, the Court can reasonably conclude that in light of **Sections 124 (1), 125, 120(1)(b) and (2), 122 (2) and 123 (3)**, the Prosecution has successfully proven beyond a reasonable doubt, especially in view of the Accused Person's admission of Stealing 15 bundles of Electrical Cables from PW1's home, that the Accused Person herein did steal some bundles of new Electrical Cables from PW1's home, which belonged to PW1.

Seeing as there exists no reasonable doubt in this regard, the Court finds the Accused Person **GUILTY** of the offence of Stealing per Count 2.

The Accused Person is accordingly **CONVICTED** of the offence of Stealing.

### **Pre-Sentencing Considerations**

- a) The fact that the Accused Person is a first time offender.
- b) The age of the Accused Person (19 years old).
- c) The period spent by Accused Person in Police Custody pending the execution of the bail granted to him by the Court on 8<sup>th</sup> December 2022. **(see Record of Proceeding)**.

**SENTENCING**

The Accused Person is sentenced on Count one (1) to serve **one (1) Year Imprisonment** and on Count two (2) to serve **three (3) Years Imprisonment**.

The above sentences shall run concurrently.

(SGD)

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H/H SEDINAM AWO BALOKAH  
JUDGE  
CIRCUIT COURT 2  
ADENTA