

**IN THE CIRCUIT COURT “A”, TEMA, HELD ON WEDNESDAY, THE 29<sup>TH</sup>  
DAY OF NOVEMBER, 2023, BEFORE HER HONOUR AGNES OPOKU-  
BARNIEH, CIRCUIT COURT JUDGE**

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**SUIT NO: D4/11/21**

**THE REPUBLIC**

**VRS**

**STEPHEN NARH**

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**ACCUSED PERSON**

**PRESENT**

**C/INSP. SUSANA AKPEERE FOR PROSECUTION**

**PRESENT**

**PRINCE KWEKU HODO, ESQ. FOR THE ACCUSED PERSON ABSENT**

**JUDGMENT**

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**FACTS:**

The accused person was arraigned before this court on 12<sup>th</sup> July, 2021, on a charge of stealing contrary to **Section 124** of the Criminal Offences Act (1960) Act 29.

The brief facts presented by the prosecution are that the complainant, David Angmortey, is a freight forwarder at the Tema Port and the accused person is a driver resident at Ashaiman. The prosecution asserts that on the 24<sup>th</sup> day of February 2021, the complainant cleared a 6”x20” footer container of galvanized stainless-steel pipes from the Tema Port and the goods were loaded on the trucks of the accused person and other drivers to cart them to the warehouse of one Maxwell Asare, the owner of the goods at Taifa, Accra and Kumasi respectively. According to the prosecution, on reaching the warehouse in Taifa, the shop attendant detected that the original MAERSK Line Seal with number *CN6015259* which was used to lock the container had been replaced with a new *seal number 008073*. The prosecution states further that the accused person after delivering the goods at the Taifa Warehouse, proceeded to Kumasi with the Kumasi bound goods and upon reaching, Maxwell Asare, the owner of the goods detected that there was a shortage of 776 pieces of the products and he

queried the accused person about the shortage but he could not offer any tangible explanation. He warned the accused person to return the alleged missing items to his shop. Later, the accused person allegedly returned 599 pieces of the missing items to the warehouse at Taifa but could not account for the remaining 177 pieces valued at GH¢24,000.00.

On 1<sup>st</sup> March, 2021, a complaint was lodged at the Police station leading to the arrest of the accused person who denied the offence and upon interrogation, he stated that it was his driver's mate, one Amos, who stole the items yet he could not assist the police to locate the said driver's mate to give his version of the events to explain the shortages. It is further alleged that during investigations, the accused person led the police to a yard along the motorway, and showed the police the exact location where the alleged stolen products were kept and a search was conducted in the area but the remaining products could not be traced. However, traces of plastic polythene products used in covering the pipes were seen littered all over the place and these were photographed. Again, the police also retrieved a copy of the waybill from MPS indicating that the seal number on the container the accused person carried from the Port was *CN6015259* which was different from seal number *008073* which was fixed on the container when it arrived at its destination. After investigations, the accused person was subsequently charged with the offence stated on the charge sheet before this honourable court.

## **THE PLEA**

The accused person who was represented by Counsel pleaded not guilty to the charge after it had been read and explained to him in the Dangbe language. The accused person having pleaded not guilty to the charge, the prosecution assumed the burden to prove the guilt of the accused person beyond reasonable doubt.

The case proceeded to trial and the prosecution called four witnesses and tendered in evidence **Exhibit “A”**- the caution statement of the accused person, **Exhibit “B”**, Photograph of a weedy area, **Exhibit “C”**-Photograph, of the seal place on the container, **Exhibit “D”**- Equipment Interchange report/Waybill, **Exhibit “E”**- photographs of stainless-steel pipes, **Exhibit “F”**, charge statement of the accused person. At the close of the case for the prosecution, counsel for the accused submitted that there is no case made out sufficiently to require the accused person to open his defence but failed to file the submission of no case as ordered by the court. On 12<sup>th</sup> June, 2023, the court ruled that based on the evidence led, a prima facie case of stealing was sufficiently made out requiring the accused person to open his defence. Based on the court’s order the accused person opened his defence. The accused person testified in his defence and called no witnesses in his defence.

### **BURDEN OF PROOF**

It is trite learning that in criminal cases, the burden is on the prosecution to prove the guilt of the accused person beyond reasonable doubt. See **Sections 11, 13, and 15** of the Evidence Act, 1975, (N.R.C.D. 323). In the case of **Dexter Johnson v. The Republic** [2011] 2 SCGLR 60 at page 663, the Supreme Court per Dotse JSC stated that:

*“Our system of criminal justice is predicated on the principle of the prosecution, proving the facts in issue against an accused person beyond all reasonable doubt. This has been held in several cases that, whenever any doubts exist in the mind of the court which has the potential to result in a substantial miscarriage of justice, those doubts must be resolved in favour of the accused person. I believe this principle must have informed William Blackstone’s often quoted statement that: “Better that ten guilty persons escape than one innocent suffers.”*

The court proceeded to state at page 666 that:

*“It should be noted that the right of an accused person to a fair trial, has been guaranteed by various constitutional provisions, such as articles 14(2) and 19 of the 1992 Constitution, just to mention a few. The principle can very well be formulated that despite the seriousness of a crime, just as happened in the instant case, if the acceptable principles and requirements on the burden of proof set down by law are not satisfied and/or applied as laid down in the constitution, the Evidence Act, 1975 and the decided cases, then, just like happened in the Egbetorwokpor case, it is better for guilty persons to walk away free than for an innocent person to be punished or incarcerated. However, the non-satisfaction or breach of the above principles formulated above, must be such that would cause or lead to a substantial miscarriage of justice.”*

It is also well established that in criminal cases, the accused person has no legal obligation to prove his innocence. All that is required when the accused person is called upon to open his defence is to produce evidence to raise a reasonable doubt in the case of the prosecution as to his guilt and the standard of proof on the defence is on a balance of probabilities only. In the case of **Woolmington v. Director of Public Prosecution** [1935] AC 462, the Appeal court of England per Sandy LC stated 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.”

## **ANALYSIS**

Here, the accused person is charged with stealing contrary to **Section 124(1)** of the Criminal Offences Act, 1960(Act 29). Stealing is defined under **Section 125** of Act 29 as follows:

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

In the case of **Cobbina v. The Republic** (J3 7 of 2019) [2020] GHASC 4 (19<sup>th</sup> February 2020), the Supreme Court stated that the essential ingredients of the crime of stealing which the prosecution must prove beyond reasonable doubt, are;

1. The subject matter of the theft must belong to another person.
2. The accused person must appropriate it.
3. The appropriation must be dishonest

Firstly, **the prosecution must prove that the accused person was not the owner of the 177 pieces of galvanised stainless steel pipes alleged to have been stolen.** In the case of **Dwamena v. The Commissioner of Police** [1964] GLR 563, the Court held that:

*“The first essential ingredient of stealing therefore is that the person charged with the theft of a thing is not the owner of the thing, the subject-matter of the theft. Therefore if a person charged with stealing a thing pleads not guilty to the charge, the prosecution cannot under any circumstances succeed without proving either that the subject-matter of the charge belongs to the person in whom ownership of the thing is laid in the charge, or in the alternative that the defendant is not the owner of that thing...”*

Throughout the trial, the ownership of the goods alleged to have been stolen was never challenged. From the brief facts and the evidence adduced by the prosecution, the container containing the galvanised stainless steel pipes belongs to one Maxwell Asare who has his warehouse located in both Taifa, Accra and Kumasi and that the accused person was only a driver engaged to convey the goods from the Tema Port to the warehouses of the said Maxwell. The accused person did not challenge the ownership of the goods and also in his evidence before the court and in his cross-examination of the prosecution witnesses, admits that the goods belonged to Maxwell Asare and that he was only a driver engaged to convey the goods. Therefore, the prosecution

succeeded in proving that the accused person was not the owner of the goods alleged to have been stolen.

Secondly, **the prosecution must prove that the accused person appropriated the goods allegedly stolen.** This is the most contentious issue. Whereas the prosecution claims that the accused person appropriated 177 pieces of the galvanised stainless steel pipes, the accused person vehemently denies same. **Section 122(2)** of Act 29, defines appropriation of a thing as:

*“...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 his right or interest in the thing, or in its value, or a part of a thing.”*

To prove that the accused person appropriated goods of which he was not the owner, the first prosecution witness (PW1), Ebenezer Osei, testified that he is the store keeper for PW1 at Taifa in Accra. According to his testimony, sometime ago, his boss informed him that he was expecting a container loaded with stainless steel pipes at the shop. Subsequent to that, on 24<sup>th</sup> February, 2020, the container arrived at the shop at Taifa, and he took photographs of the seal number on the container which was 008073 and sent it to his boss who was then in Kumasi. PW1 further testified that after taking the photograph of the seal on the container, he opened the seal in the presence of the driver popularly known as Ofa Atta, took all the stainless-steel pipes PW3 asked him to take and the remaining steel plates were left for the driver to send to the Kumasi branch of the shop. However, when he checked the consignment, he noticed that there were shortages of pieces in the bundles of the stainless-steel pipes as it did not tally with the figure his boss gave him. Consequently, he informed his boss about the shortage and he told him that he would confirm the shortage after the Kumasi bound goods had been delivered.

PW1 further testified that subsequently, his boss confirmed the shortage and told him that he would report the shortage to the agent to investigate same and it was there that he got to know that the original seal number used in locking the container was *CN 6015259* and not the seal number *008073* which was on it when the goods arrived at the shop in Taifa, suggesting that the original seal had been broken and replaced. Two days later, his boss called to inform him that the driver, Wofa Atta had brought some pipes to the shop so he should go and check. When he got there, the car loaded with the pipes was parked outside without the driver and attempts to reach him on his mobile phone proved futile. When he informed his boss about the absence of the driver, he instructed him to pack the pipes inside and the next morning when he went to work, the truck had been moved.

The second prosecution witness (PW2), David Angmortey, the complainant, testified that he is a freight forwarder and on 24<sup>th</sup> February, 2021, he cleared six containers of stainless-steel pipes and steel plates from the MPS terminal at the Tema Port for Maxwell Asare, who instructed him to deliver the goods at his shops located at Taifa in Accra and Kumasi respectfully. According to him, the shipping agent was MAERSK Line and they had used seal *No. 6015259* to lock the container. He testified further that on 24<sup>th</sup> February, 2021, the goods were loaded for five different trucks to send to the warehouses of the owner at Taifa and Kumasi respectively but when the goods got to their destination, he was informed that the original MAERSK Line seal *No. 6015259* had been replaced with a new seal *No. 008073*. He further testified that the accused person was the driver of one of the trucks which was loaded with the goods to be delivered and he offloaded the Accra consignment and proceeded to Kumasi to offload the remaining goods.

PW2 further testified that when the goods arrived at its destination in Kumasi, the owner of the goods, detected shortage of 776 pieces of the stainless-steel pipes which were offloaded at Taifa-Accra and he confronted the accused person but he could not

explain the shortage. Thereafter the owner called to inform him about the shortage and the change of seal on the container upon arrival at Taifa. According to PW2, when he confronted the driver of the truck, he admitted and upon his investigations he got to know that it was his driver's mate who stole the items and he returned some of the stolen items to PW3 but there was still a shortage of 177 pieces of stainless-steel pipes valued at GH¢24,000.00. Based on that, he lodged a complaint at the Harbour Police Station and the driver was arrested but he could not also produce his driver's mate who allegedly stole the pipes.

The third prosecution witness (PW3), Maxwell Asare, the owner of the goods testified and also confirmed that when the goods arrived at the shop in Taifa, his shop attendant, PW1, took a photograph of the seal on the container and reported the shortage in the quantity of the goods. PW3 further testified that the accused person brought the remaining consignment meant for Kumasi to him the next day after discharging the Taifa consignment and he called PW2 to confirm the seal number given to him by his shop attendant and he also confirmed that the seal number had been changed before getting to the Taifa shop because that was not the original seal from *MEARSK Line*. He confronted the accused person who returned 599 pieces of the pipes leaving 177 pieces valued at Twenty Four Thousand Ghana Cedis (GH¢24,000) unaccounted for. He reported the theft of the goods to the agent based on which the accused person was arrested.

The fourth prosecution witness (PW4), the investigator, C/Insp Daniel Dadzie testified and confirmed the appropriation of the goods of 177 pieces of galvanised stainless steel pipes valued at GH¢24,000.00 belonging to the third prosecution witness. He recounted the steps he took during investigations and that during investigations, the accused person denied the offence and stated that when he exited the port, he was tired so he went home and handed over the load in his truck to his driver's mate, one Amos to offload the Taifa bound goods and that it was his mate who allegedly stole the goods.



However, the accused person could not give any tangible information about the whereabouts of the so-called mate and stated that he does not know his place of abode but only met him at the port some few months before the incident and started working with him. He tendered in evidence the caution statement admitted and marked as **Exhibit “A”**.

PW4 further testified that on 29<sup>th</sup> March, 2021 the accused person led him to a yard along the motorway and showed him where some of the products had been kept and after a thorough search was conducted in the area, the remaining products could not be traced. However, he saw traces of plastic polythene products used in covering the pipes littered at the scene. He tendered photographs of the scene where some of the goods were retrieved, admitted and marked as **Exhibit “B”**. PW2 then furnished the police with a photograph of the alleged fake seal number 008073 which was used by the accused to lock the container when it arrived at the Taifa shop of PW3, admitted and marked as **Exhibit “C”**. Also, a photocopy of the waybill from MPS indicating the seal number on the container the accused person carried from the port which was CN6015259, was marked as **Exhibit “D”**. PW4, further testified that the shop attendant, PW1, sent him photographs of the alleged stolen pipes which was brought to the Taifa shop by the accused person, admitted and marked as **Exhibit “E”** and the charge statement of the accused person admitted and marked as **Exhibit “F”**.

The accused person on his part testified in his defence that he is a driver and further admits that he went to the Tema Port to convey the goods meant to be delivered at the warehouse of the third prosecution witness. The accused person further testified that when he came out of the Tema Port, he was tired since he had spent three days at the Port waiting for the container to be released so he parked the vehicle at the Accra-Tema Toll Booth and called his driver’s mate to send the goods to Taifa and after that he would continue the journey to Kumasi with the goods. After sending the goods to Kumasi, the agent called him that he had detected shortages in the goods offloaded.

When he enquired from his driver's mate, he admitted stealing the goods to enable him raise money to renew his rent which had expired. He further told him that he packed the goods along the motorway. Based on that, he went for the goods and sent them to the workers of PW3 at the Taifa warehouse. After sending the goods, PW3 called him again that the goods were not up to the quantity required. Subsequently, he was arrested and charged with stealing.

Under cross-examination by the prosecution, the accused person maintained that it was his driver's mate who stole the goods. Thus, the accused person does not deny that the seal of the container had been broken and part of the goods stolen but maintains that it was his driver's mate who stole the goods to enable him pay his rent. The accused person further stated under rigorous cross-examination by the prosecution that it was the driver's mate who offloaded the goods at Taifa and it was later that the complainant called him that some of the goods had been stolen which the mate confirmed that he had stolen the goods.

In addition, the accused person in his investigation caution statement strenuously maintained that it was his driver's mate who stole the goods and that when he sent a car to the location where he had shown him as the place he kept the stolen goods, he collected 1,000 pieces that were in bundles but he did not count the actual quantity and that it was later the following day that the importer called him that there was shortage in the goods delivered and that 177 pieces were still missing. According to him, he only met the alleged driver's mate at the Port and engaged him as a mate when he expressed a desire to learn how to drive and that he does not know where he stays and does not also know any of his family members.

In the case of **Republic v. Kwabena Amaning @ Tagor**, [28/11/2007] Suit No. ACR.4/2007 Dotse J.A. sitting as an Additional High Court Judge held laid down the steps to follow in determining that there has been proof beyond reasonable doubt in the following terms;

*a. Consider the prosecution's case as is stated by their witnesses. This must be matched with the offences with which the accused has been charged. There certainly are key essential ingredients in each offence. If the prosecution case supports the essential ingredients of the offence charged, then you go to stage two.*

*b. This is the consideration of the accused persons story and explanation. This should also be linked to the prosecution's case vis-à-vis the charges that the accused person is facing. If the court disbelieves the story or case of the accused person, the court should nonetheless go a step further to*

*c. Give consideration to the fact that even though the accused person's story is disbelieved, it could however be reasonably probable.*

The issue then is whether the defence of the accused person to the appropriation of the goods is reasonably probable. It can be gleaned from the evidence on record that the accused person was the driver in charge of the goods. The first prosecution witness who received the goods at the Taifa shop maintained under strenuous cross-examination by the accused person that it was the accused person who delivered the goods at the Taifa warehouse and that day, he opened the seal of the container in the presence of the accused person. He further maintained that occasionally when the accused person offloads the goods, they record shortages but when he complains to PW3, he dismisses his suspicion and attributes the shortage to inaccurate counting. It is also the accused person who, upon detection of the shortage in the goods, went for some of the goods and abandoned them at the warehouse at Taifa. This confirms the testimony of the prosecution witnesses that the seal had been broken and replaced with a different seal number. The testimony of the accused person that it was his driver's mate whom he asked to send the goods to the warehouse at Taifa who stole the goods

strains credulity since PW1 who received the goods confirmed that it was the accused person that he took delivery of the goods from and proceeded to Kumasi with the remaining goods. According to him, he opened it in the presence of the accused person and sent pictures of the broken seal to his boss in Kumasi who asked him to wait for the accused person to deliver the Kumasi bound goods for him to confirm the shortage. The accused person who claims that when the agent called him about the shortage, he called the driver on phone who showed him where he had hidden the goods claims that the driver that he had worked with for sometime, he did not know where he stayed or any of the people who knew him. The accused person also failed to furnish prosecution with the contact number of the said driver for him to be contacted during investigations to ascertain where the missing goods were offloaded. Additionally, from the investigation caution statement of the accused person, he states that he met the said driver at the Port and he requested to be his driver's mate to learn how to drive. It is therefore not probable that someone who was now learning how to drive from the accused person could drive the truck load of goods from the Tema Motorway to Taifa to deliver the goods. In my considered opinion, the defence put up by the accused person as to the appropriation is not reasonably probable. I therefore find that the accused person appropriated the goods of which he was not the owner.

Lastly, **the prosecution must prove that the appropriation is dishonest.** Under **section 120(1) of Act 29**, a person can be guilty of dishonest appropriation in the following two circumstances:

- (a) if it is made with intent to defraud, or
- (b) if it is made by a person without any claim of right; and with a knowledge or belief that the appropriation was without the consent of a person for whom that person is a trustee or who is the owner of the thing, or that the appropriation would, if known to the other person, be without the consent of the other person.

Under **section 16** of Act 29, intent to defraud is defined as

*“an intent to cause by means of forgery, falsification or other unlawful act, any gain capable of being measured in money, or the possibility of any such gain, to any person at the expense or to the loss of any other person”*

In the case of **Ampah v. The Republic [1976]** 1 GLR 404 @413, Per Abban J., the court held that:

*“It can therefore be said that section 120 (1) of the Criminal Code, 1960 (Act 29), contemplates two kinds or types of dishonest appropriation. The first type is where the appropriation is made with intent to defraud; and the second type is where the appropriation is made without a claim of right and without the consent of the owner. That is, an appropriation with intent to defraud can amount to dishonest appropriation; and that an appropriation without a claim of right and without the consent of the owner is just an alternative definition which the section gives to the term “dishonest appropriation.” Proof of an appropriation with intent to defraud or of an appropriation without the consent of the owner, either one of them, can constitute dishonest appropriation. So that proof that an accused person appropriated the subject-matter of the charge with intent to defraud will by itself amount to dishonest appropriation and in such a case further proof of lack of consent of the owner to the appropriation will be absolutely unnecessary. It will be superfluous.”*

In the case at bar, the prosecution successfully established that the accused person was not the owner of the goods and that the accused person appropriated the goods when he took part of the goods that he was instructed to deliver at the warehouse of PW3. The intention of the accused person, in taking and hiding some of the goods along the Tema Motorway could not have been for any other reason but to gain at the expense of the rightful owner of the goods. The circumstances does not also lead the court to believe that the appropriation of the goods was with the consent of the owner or that the accused person has a valid defence of a claim of right to the appropriation of the

goods. I therefore hold that the accused person dishonestly appropriated galvanised stainless steel pipes of which he was not the owner.

On the totality of the evidence led by the prosecution and the defence put up by the accused person, I hold that the accused person failed to raise reasonable doubt in the case of the prosecution that he appropriated the goods in contention in this case. Thus, the prosecution succeeded in proving their case beyond reasonable doubt that the accused person dishonestly appropriated goods of which he was not the owner. I therefore pronounce the accused person guilty of the charge and convict him accordingly.

### **SENTENCING**

In sentencing the convict, the court takes into consideration his plea in mitigation of sentence. The court in mitigating the sentence of the convict takes into consideration the fact that according to the prosecution, he has led an unblemished life without any previous conviction for the same or similar offence. The court also considers the age of the accused person i.e. 57 years, married with three children and the fact that part of the goods stolen have been retrieved leaving 177 pieces valued at Twenty Four Thousand Ghana Cedis (GH¢24,000) not recovered. I therefore sentence the accused person to serve a term of imprisonment of Twenty Four (24) months in hard labour.

### **RESTITUTION ORDER**

In accordance with **Section 146** of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30), the Convict shall refund the amount of GH¢24,000 being the value of the goods not retrieved to the rightful owner, Maxwell Asare.

**SGD.**

**H/H AGNES OPOKU-BARNIEH  
(CIRCUIT COURT JUDGE)**