

IN THE CIRCUIT COURT HELD AT ACHIMOTA, ACCRA ON FRIDAY, THE 8TH DAY OF DECEMBER, 2023 BEFORE HER HONOUR AKOSUA ANOKYEWAA ADJEPONG (MRS.), CIRCUIT COURT JUDGE

CASE NO.: D3/001/24

THE REPUBLIC

VRS

ERNEST KORANTENG

ACCUSED PERSON PRESENT

CHIEF INSPECTOR JOSEPHINE OWUSUAA AMOAH HOLDING THE BRIEF OF A.S.P. STEPHEN AHIALE FOR THE REPUBLIC PRESENT

NO LEGAL REPRESENTATION FOR THE ACCUSED PERSON

JUDGMENT

THE CHARGES

The accused person was arraigned before this Court on 20th September 2023 on the following charges;

1. Unlawful Entry, contrary to *section 152* of the Criminal Offences Act, 1960 (Act 29)
2. Causing Unlawful Damage, contrary to *Section 172 (1) (b)* of the Criminal Offences Act, 1960 (Act 29)
3. Stealing, contrary to *section 124(1)* of the Criminal Offences Act, 1960 (Act 29)

THE PLEA

He pleaded not guilty to the charges after same had been read and explained to him in Twi, being his choice of language. The accused person having pleaded not guilty to the charges, the prosecution assumed the burden to prove the guilt of the accused person beyond reasonable doubt.

FACTS

The facts of the case as presented by the prosecution are that the complainant in this case is Edward Kwabena Adusei, age 51, a driver at the National Identification Authority. Whereas the accused person Ernest Koranteng, age 31, is an auto-electrician resident at Abossey Okai. On 07/09/2023 at about 8:00 am, complainant received a phone call from neighbours that a thief had intruded into his bedroom and was arrested. Complainant rushed to the scene and saw his metal gate and two of his wooden doors, all valued at GH¢800.00 and GH¢1400.00 respectively, damaged. Upon entering his bedroom, he saw the said neighbours inside his bedroom holding the accused person firmly with his bag containing eighteen pieces of GTP cloths and two Kente cloths by the accused and was told the accused stole same inside his room and was arrested. Investigation revealed that a witness saw the accused scale complainant's wall and monitored him until he broke the doors and entered into the room, the said witnesses laid ambush inside the complainant's house and just as accused came out of the room carrying complainant's bag on his head; they grabbed him and informed complainant and the Police. The two Kente cloths as well as the eighteen GTP cloths were retrieved and same retained. The accused admitted the offences in his caution statement and after investigations, he was charged with the offences and arraigned before this Honourable Court.

To discharge their legal burden, the prosecution called three witnesses including the investigator.

EVIDENCE OF PW1

PW1 who is also the complainant gave his name as Edward Kwabena Adusei. That he is a driver residing at Ga-Odumase. He continued that on 7th September 2023, he was at work at Shiashi around 8:00am when one of his neighbours, Enyonam called him on phone and informed him that a thief had broken into his house and that he should come over. That he rushed to the house and saw that the accused person was already arrested by some good Samaritans, and they had also called the police to come and assist them and the police were at the scene before he reached there. According to PW1, when he entered the house, he found that the accused person had broken his iron gate and also caused damage to two of his wooden doors. That inside the room, the accused person took away his money box containing unspecified quantity of coins in Ghana cedis. That the accused person also took eighteen pieces of female cloths, two pieces of Kente cloths and an amount of GH¢500.00 from his wife's room. That all the clothes were retrieved except the cash of GH¢500.00. He further stated that the accused person was taken to the police station with the stolen items where he gave his statement to the police before he was eventually brought to court. PW1 concluded that when they returned from the police station, and on his way home, he found his money box containing the coins in the nearby bush near his house, wrapped in a green polythene bag.

EVIDENCE OF PW2

PW2, also gave her name as Enyonam Amezah and added that she is a trader residing at Ga-Odumase; and is a neighbour of the complainant in this case. She continued that on 7th September 2023, at about 7:45 am, she was in her house at Ga-Odumase when someone drew her attention to the fact that, her neighbour, the complainant's gate was locked but someone was coming out from the house. That she went to the complainant's gate, met the accused person and asked him what he was looking for, to which he answered that

he was looking for the complainant. That she asked him again whether he called the complainant and he said he called complainant, but the complainant's line was not going through. PW2 continued that she removed her phone to call the complainant, but the accused person started running away. That she shouted for help and people came out, pursued him and had him arrested. That the accused person was brought back to the house where they saw that he had used a screwdriver to destroy the complainant's burglar proof and two of his wooden doors. That they saw that the accused person had hid a brown bag behind one pillar and when he was brought back to the scene, he admitted that he broke into the complainant's room and stole the contents of the bag. PW2 further told the court that when the bag was opened, they found out that it contained eighteen pieces of cloth and two Kente cloths. That the complainant was called, and he rushed to the house where he identified the stolen items as his. That the police patrol team also came to the scene and took the accused person away. She also concluded that they later found a susu box containing coins in a nearby bush that also belongs to the complainant.

EVIDENCE OF PW3

PW3, the investigator herein (D/Inspector Eric Doe Kpodo) told the court that he knows all the parties in this case. That on 07/09/2023, while on duty as the available investigator, complainant assisted by the Pokuase Police Patrol team arrested and brought to the station accused Ernest Koranteng with some eighteen pieces of GTP cloth valued GH¢3,600.00 as well as two Kente cloths valued GH¢1,400.00. That the complainant reported that accused broke into his room and stole same but was caught by a witness who drew complainant's attention hence the arrest of the accused person. According to PW3, he obtained investigation caution statement from the accused person and in his investigation caution statement, he admitted the offences of unlawful entry, stealing and causing unlawful damage. He tendered the caution statement of the accused person as

exhibit 'A'. PW3 continued that he retrieved the eighteen GTP cloths and the two Kente cloths. That he also visited the crime scene and took photographs of the two wooden and a metal door damaged by the accused. He tendered the photograph of a wooden door as exhibit 'B', photograph of a man (which the accused person identified as being him) as exhibit 'C', exhibit 'D' being photograph of a metallic gate and exhibit 'E' being photograph of Kente and other cloths. According to PW3, having gathered enough evidence, he charged the accused person with offences of unlawful entry, stealing and causing unlawful damage. That the accused person volunteered a statement to that effect, and he tendered the charge statement of the accused person as exhibit 'F'.

Thereafter, the prosecution closed its case.

After the close of the case of prosecution, the Court examined the evidence of the prosecution witnesses to determine whether a prima facie case had been made by the prosecution to warrant the accused person to open his defence. The Court then ruled that a prima facie case had been made and the accused person was to raise a reasonable doubt in the case of the prosecution.

In view of the above, the Court found that the accused person had a case to answer and was therefore called upon to enter into his defence, after the options available to him as an accused person were explained to him. The court also reminded the accused person of the charges against him. The trial was adjourned for the accused person to decide the option to choose. On the next court sitting, the accused person informed the court that he had chosen to keep quiet and not say anything.

The accused person did not also call witness.

LEGAL ISSUES

The legal issue to be determined by this court are as follows:

1. *Whether or not the accused person scaled a wall, broke doors and entered into the room of Edward Kwabena Adusei, complainant herein, with the intent to commit crime to wit: Stealing.*
2. *Whether or not the accused person did unlawfully break two wooden doors and a metal door valued GH¢1,400.00 and GH¢800.00 respectively, being the properties of the complainant herein.*
3. *Whether or not the accused person did dishonestly appropriate eighteen pieces of GTP cloths valued GH¢3,600.00 and two Kente cloths valued GH¢1,400.00 being the properties of the complainant herein.*

BURDEN AND STANDARD OF PROOF

A fundamental principle of our criminal justice system is that a person accused of a crime is presumed innocent until he has pleaded guilty or proven guilty. It is trite learning that in criminal cases, the prosecution bears the burden to prove the guilt of the accused person beyond reasonable doubt.

See *sections 11(2), 13(1) and 15* of the Evidence Act, 1975, (NRCD 323).

In the case of *Gligah & Attiso v. The Republic [2010] SCGLR 870*, the Supreme Court held as follows;

“Under article 19 (2) (c) of the 1992 constitution, everyone charged with a criminal offence was presumed innocent until the contrary is proved. In other words, whenever an accused person was arraigned before any court in any criminal trial, it was the duty of the prosecution to prove the essential ingredients of the offence charged against the accused person beyond reasonable doubt. The burden of proof was therefore on the prosecution and it was only after a prima facie case had been established by the prosecution that the accused person would be called upon to give his side of the story.”

The burden on the accused person, when called upon to enter his defence, is to raise a reasonable doubt in the case of the prosecution. The standard of proof for the defence is proof on a balance of probabilities.

In the case of *Osae v. The Republic [1980] GLR 446*, the court held that:

“although it was settled law that where the law cast the onus of proof on the accused, the burden on him was lighter than on the prosecutor, and the standard of proof required was the balance of probability, if at any time of the trial, the accused voluntarily assumed the onus of proving his defence or some facts as happened in this case, the standard he had to discharge was on a balance of probabilities.”

ANALYSIS

- 1. Whether or not the accused person scaled a wall, broke doors and entered into the room of Edward Kwabena Adusei, complainant herein, with the intent to commit crime to wit: Stealing.***

Section 152 of Act 29 on unlawful entry provides that:

“Whoever unlawfully enters any building with the intention of committing crime therein shall be guilty of second degree felony.”

The elements of the offence of unlawful entry are contained in ***section 153 of Act 29*** and it reads as follows:

“A person unlawfully enters a building if he enters otherwise than in his own right or by the consent of some other person able to give such consent for the purposes for which he enters.”

PW1 in his evidence in chief told the court that he had a call that a thief had broken into his house and that he should come over. PW2 also told the court that someone drew his attention to the fact that the complainant's gate was locked but someone was coming out from the house. That he approached the accused person and asked him what he was looking for to which he said he was looking for the complainant but he started running away when she attempted to call the complainant. So she shouted for help and people assisted in arresting the accused person.

From the evidence of PW2, she saw the accused person coming out of the complainant's house but her evidence does not indicate that she saw the accused breaking into the complainant's house. The question any reasonable person will ask, is how did the accused person get into the complainant's house for him to have been seen coming out of same? From the evidence of PW3, the complainant reported that the accused person broke into his room. That the accused person admitted the offence of unlawful entry and the other offences in his caution statement. PW3 tendered the said caution and charge statements as exhibits 'A' and 'F' respectively. The contents of exhibit 'A' is very similar to that of exhibit 'F'.

For the avoidance of doubt I reproduce exhibit 'A' being the caution statement of the accused person and it reads as follows:

*"It is true that I stole the complainant's properties. The properties that I stole include: two Kente cloths, eighteen pieces of ordinary cloths. **I broke up the entrance door leading to the room and had access.** Even though I saw money, I was caught just as I wanted to lay my hand on it. I was arrested right in the act."*

In exhibit 'F' which is the charge statement of the accused person, he stated as follows:

“It is true that I stole the complainant’s eighteen pieces of cloths and two kente cloths. I broke up his entrance door before having access to the room. I did not steal any money.”

[Emphasis provided on the relevant part of the statements on the above issue.]

The accused person was given the opportunity to cross examine PW3 on his evidence but he opted not to cross examine PW3. The accused person did not make any attempt to discredit the evidence PW3 gave as a result of his investigation in this case.

From the investigation caution and charge statements of the accused person which were duly tendered in evidence without any objection from the accused person, the accused person admitted breaking the entrance door of the complainant before having access to the complainant’s room.

These statements were taken from the accused person in compliance with all the relevant provisions of *section 120 of the Evidence Act, 1975 (NRCD 323)* applicable to the taking of confession statements and which was designed to protect accused persons.

Akamba JSC in the case of *Ekow Russel v. The Republic [2016] 102 GMJ 124 SC*, stated as follows:

*“... A confession is an acknowledgment in express words, by the accused in a criminal charge, of the truth of the main fact charged or of some essential part of it. **By its nature, such statement if voluntarily given by an accused person himself, offers the most reliable piece of evidence upon which to convict the accused.** It is for this reason that safeguards have been put in place to ensure that what is given as a confession is voluntary and of the accused person’s own free will without fear, intimidation, coercion, promises or favours ...” (Emphasis provided)*

Twumasi J in stating the position of the law as to whether confession statements can be taken as part of prosecution's case in establishing whether a prima facie case had been made stated in the case of *Amukyi v. The Republic* [1982-83] GLR 1010-1016 as follows:

*"The court would like to sound a note of warning to trial lower courts that in considering whether a prima facie case had been made by the prosecution in a criminal trial, they should confine themselves to the analysis of the evidence of the prosecution witnesses with regard to their credibility. Thus a police statement made by an accused person, **unless it was a confession statement admitted in evidence**, was not to be taken as part of the prosecution's case ..."* (Emphasis supplied).

Exhibits 'A' and 'F' are confession statements to the extent that the accused person admitted that he broke the entrance door of the complainant before entering his room. The above confession statement by the accused person points to the fact that the accused person did not enter the complainant's room in his own right or by the consent of the complainant or by some other person who is able to give such consent for the purposes for which he entered.

From the evidence on record and the authorities above, I find that the prosecution has been able to prove the elements of the offence of unlawful entry as the evidence on record indicates that the accused person unlawfully entered the room of the complainant herein. I accordingly find that the first count has been proven by the prosecution beyond reasonable doubt.

- 2. Whether or not the accused person did unlawfully break two wooden doors and a metal door valued GH¢1,400.00 and GH¢800.00 respectively, the properties of the complainant herein.*

Section 172 (1) (b) of Act 29 provides thus:

*“(1) A person who intentionally and unlawfully causes damage to property
(b) to a value exceeding one million cedis commits a second a degree felony.*

From the above, the elements of causing unlawful damage are as follows:

1. That damage was caused.
2. That the damage was caused by the accused person.
3. That damage was intentionally and unlawfully caused.

From the evidence of PW1, he found out that the accused person had broken his iron gate and also caused damage to two of his wooden doors. The evidence of PW2 does not suggest that she saw the accused person causing damage to the complainant’s two wooden doors and a metal door. However PW2 told the court that when the accused person was brought back to the house they saw that he had a screwdriver he used to destroy the complainant’s burglar proof and two of his wooden doors. That the accused person admitted that he broke into the complainant’s room and stole the contents of the bag.

Moreover, the evidence of PW3 which includes exhibits ‘A’ and ‘F’ as reproduced above indicates that the accused person admitted causing unlawful damage to the complainant’s entrance door when he confessed that he broke up the entrance door leading to the room before he had access to the room.

As held in the case of *Ekow Russel v. The Republic [supra]*, the confession statement of the accused person offers the most reliable piece of evidence upon which to convict the accused. Accordingly, I find from the evidence on record that the accused person did

unlawfully break the two wooden doors and a metal door as shown in exhibits 'B', 'C' and 'D' being the properties of Edward Kwabena Adusei, the complainant herein.

3. *Whether or not the accused person did dishonestly appropriate eighteen pieces of GTP cloths valued GH¢3,600.00 and two Kente cloths valued GH¢1,400.00 the properties of the complainant herein.*

Section 124(1) of Act 29 provides that:

"Whoever steals shall be guilty of a second degree felony."

Section 125 of Act 29 defines Stealing as follows:

"A person steals if he dishonestly appropriates a thing of which he is not the owner".

Taylor J (as he then was) in the case of *Lucien v. The Republic [1977] 1 GLR 351-359* laid out the elements in the offence of stealing as follows:

"The only basic ingredients requiring proof in a charge of stealing were that:

- i. the person charged must not be the owner of the thing stolen,*
- ii. he must have appropriated it and*
- iii. the appropriation must have been dishonest".*

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 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”.

PW1 told the court in his evidence that the accused person took away his money box containing unspecified quantity of coins in Ghana cedis. That the accused person also took eighteen pieces of female cloths, two pieces of Kente cloths. That all the clothes were retrieved from the accused person.

PW2 also testified that the accused person admitted that he broke into the complainant’s room and stole the contents of the bag. PW2 further told the court that when the bag was opened, they found out that it contained eighteen pieces of cloths and two Kente cloths.

According to PW3, his investigation revealed that the accused person dishonestly appropriated eighteen pieces of GTP cloths and two Kente cloths which he retrieved from the accused person. Furthermore, in exhibits ‘A’ and ‘F’ the accused person confessed to stealing the said cloths when he stated that *“it is true that I stole the complainant’s properties. The properties that I stole include: two Kente cloths and eighteen pieces of ordinary cloths.”*

From the evidence above, it can be safely concluded that the prosecution has been able to prove the offence of stealing against the accused beyond reasonable doubt. I therefore find from the evidence on record that the accused person herein unlawfully entered the complainant’s room, caused unlawful damage to the complainant’s wooden doors and metal door; and also dishonestly appropriated eighteen pieces of GTP cloths and two Kente cloths belonging to the complainant herein.

In the case of *Commissioner of Police v. Isaac Antwi [1961] GLR 408-412*, it was held that the accused person is not required to prove anything. All that is required of him is to raise a reasonable doubt as to his guilt.

This is further emphasized by *sections 11(3) and 13(2) of the Evidence Act, 1975 (NRCD 323)*. *Section 11(3)* provides that:

“In a criminal action, the burden of producing evidence, when it is on the accused as to a fact the converse of which is essential to guilt, requires the accused to produce sufficient evidence so that on the totality of the evidence a reasonable mind could have a reasonable doubt as to guilt.”

Section 13(2) provides that:

“Except as provided in section 15 (c), in a criminal action, the burden of persuasion, when it is on the accused as to a fact the converse of which is essential to guilt, requires only that the accused raise a reasonable doubt as to guilt.”

All that the accused person needed to do was to raise a reasonable doubt in the case of the prosecution but he could not do so. The accused person did not give evidence to attempt to raise a reasonable doubt in the case of the prosecution.

I support my decision with the dictum of Denning J. (as he then was) in the case of *Miller v. Minister of Pensions* [1947] 2 All E.R. 372 at p. 373 where he said:

"Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible, but not in the least probable,' the case is proved beyond reasonable doubt, but nothing short of that will suffice."

CONCLUSION

For the foregoing reasons, I find that the prosecution has been able to establish beyond reasonable doubt that, indeed the accused person committed the offences under counts one, two and three. Consequently, I pronounce the accused person herein guilty on

counts one, two and three being the offences of Unlawful Entry, Causing Unlawful Damage and Stealing; and the accused herein is convicted on the said three counts accordingly.

Pre-Sentencing hearing

Q: Any plea in mitigation before sentence is passed?

A: I plead with the court to be lenient with me because I did not do well at all.

Q: Is the accused person known to the police?

A: No, he is a first time offender.

SENTENCING

In sentencing the accused person, the court takes into consideration his plea in mitigation, the fact that he is a first time offender and his youthful age. In accordance with Article *14(6) of the 1992 Constitution*, time spent in custody pending trial is considered. The court also takes into consideration the fact that the items under count three were retrieved from the accused person by the investigator. However, the court has equally considered the entire evidence on record and the role the accused person played in committing the said offences in broad daylight at about 8:00 am when the complainant had gone to work. The court is of the view that there is a need to impose a deterrent sentence to send shivers down the spine of people with similar criminal propensity to curb the spate of these crimes within the community for people and businesses to operate under peaceful and secured environment. I consequently sentence the accused person as follows:

Count 1: The accused person is sentenced to serve a term of imprisonment of twelve (12) months in hard labour (I.H.L.)

Count 2: The accused person is sentenced to serve a term of imprisonment of twenty-four (24) months in hard labour (I.H.L.). In addition the accused person shall pay a fine of two hundred (200) penalty units. In default of the fine, the accused person shall serve a term of imprisonment of twelve (12) months in hard labour (I.H.L.)

Count 3: The accused person is sentenced to serve a term of imprisonment of twenty (20) months in hard labour (I.H.L.).

Restitution Order

The accused person is ordered to pay the amount of GH¢2,200.00 to the complainant being the value of the complainant's properties he caused unlawful damage to.

[SGD.]

H/H AKOSUA A. ADJEPONG (MRS)

(CIRCUIT COURT JUDGE)