

**IN THE CIRCUIT COURT HELD AT KWABENYA ON TUESDAY 2<sup>ND</sup>**  
**NOVEMBER, 2023 BEFORE HER HONOUR MAWUSI BEDJRAH,**  
**CIRCUIT JUDGE**

**CASE NO. B8/23/2020**

**THE REPUBLIC**

**VRS**

**MOHAMMED ODURO**

**ACCUSED**

**PRESENT**

**CHIEF INSPECTOR MABEL ATSU FOR PROSECUTION**

**PRESENT**

**JUDGMENT**

Accused was charged with two counts of stealing, contrary to section 124 (1) of the Criminal Offences Act, 1960 (Act 29). The amounts involved were the sum of GH¢52,409.71 and toilet soaps, laundry and house-hold care items valued at GH¢32,837.38, all belonging to Karley and Choice Company Limited.

Accused pleaded not guilty to both charges.

**INGREDIENTS OF THE OFFENCE:**

For the charge of stealing to succeed the prosecution must prove the following ingredients of the offence:

- (a) That the accused was not the owner of the thing alleged to have been stolen
- (b) That there was appropriation
- (c) That the appropriation was dishonest

(See the case of **JOHN COBBINA V THE REPUBLIC** [2020] DLSC 880).

**BURDEN OF PROOF:**

Per Article 19 (2) (c) of the 1992 Constitution, a person charged with a criminal offence is presumed innocent until he is proved guilty or he pleads guilty. Prosecution assumes the burden to prove the guilt of the accused beyond reasonable doubt as required by section 11(2) of the Evidence Act, 1975 (NRCD 323). The accused, on the other hand, is not required to prove his innocence but only to raise a reasonable doubt as to his guilt as required by Section 11(3) of NRCD 323.

## **THE EVIDENCE OF PROSECUTION:**

Prosecution called two witnesses in an attempt to discharge its burden. Their evidence is summarized as follows:

### **PW1-PROFESSOR NOAH KOFI KARLEY**

PW1 is the complainant in the case and the Chief Executive Officer of Karley & Choice Company Limited. He testified that sometime during June 2021, when the Ghana economy was reopened after a brief closure due to the Covid 19 pandemic, some anomalies on the accounts of the accused were observed. This prompted him to request a thorough investigation to be carried out by the then General Manager, Mr. Prince Amaning. This was done and some anomalies in the form of misappropriation of funds in the accounts of the accused person was detected and the matter reported to the Legon Police Station. Mr. Prince Amaning has left the company since 11<sup>th</sup> October, 2021. However, before leaving the company, he had provided a witness statement in April 2021.

He tendered the following documents;

- i. Account Receivable of Mohammed Oduro's account from 01/02/2020 to 16/11/2020-Exhibit 'A'
- ii. List of items given to the accused before lockdown, thus Jan, Feb and March-Exhibit 'B'
- iii. Stock Recon Report Form with details of listed items in Exhibit 'B'-Exhibit 'C'
- iv. Invoices issued to the accused in respect of K.C.L (UL)-Exhibit 'E' series
- v. Individual Back-Office Customers statements and invoices-Exhibit 'F' series

I have noted that the last paragraph of the witness statement of PW1 seeks to amend the witness statement of Mr. Prince Amaning on behalf of the company, as the true reflection of the matter, stating circumstances under which the accused misappropriated the company funds. A witness statement is personal evidence which cannot be amended by another person. I therefore find this as unacceptable and accordingly expunge paragraph 9 of the witness statement, which had inadvertently been adopted by the court.

### **PW2-DETECTIVE INSPECTOR KEVEN AMANKWA AFRIFA**

PW2 is the investigator in the case. He tendered the following documents to the court;

- i. Statement of Amaning Prince made to the police on 5<sup>th</sup> June, 2020-Exhibit 'G'

- ii. Statement of Edward Quansah made to the police on 4<sup>th</sup> July, 2020-Exhibit ‘H’
- iii. Statement of Millicent Owusu made to the police on 5<sup>th</sup> June, 2020-Exhibit ‘J’
- iv. Statement of Daniel Asante Asare made to the police on 10<sup>th</sup> November, 2020- Exhibit ‘K’
- v. Statement of Abigail Asare made to the police on 12<sup>th</sup> November, 2020- Exhibit ‘L’
- vi. Statement of Vera Dennison made to the police on 5<sup>th</sup> August, 2020- Exhibit ‘M’
- vii. Statement of Agnes Aboagye made to the police on 6<sup>th</sup> July, 2020- Exhibit ‘N’
- viii. Investigative cautioned statement of accused dated 5<sup>th</sup> June, 2020-Exhibit ‘P’ series
- ix. Charged statement of accused dated 24<sup>th</sup> June, 2020 – Exhibit ‘Q’ series

At the close of the case for prosecution, the court invited the accused to open his defence as the court found a prima facie case made against him.

#### **THE EVIDENCE OF ACCUSED:**

Accused testified himself and called one witness to testify on his behalf as follows;

#### **MOHAMMED ODURO**

A summary of the evidence of the accused is that he was a staff of Karley and Choice Limited (KCL) from 1<sup>st</sup> April 2019 to March 2020. He was assigned to work with Richard Opoku who was then the head of DSR. He was the assistant to the head of DSR. He was very hard working and so the company saw a lot of potential in him and promoted him to the head of DSR just after a month of his employment. Richard Opoku resigned and he took over as the head of DSR, whereby he inherited a negative balance of GH¢14,071.64. He informed management about the negative balance and suggested to them to create a separate account for him but management refused and told him to continue to work with the same account and that the negative balance would be cleared later. He was given a minimum target of GH¢120,000.00 per month which he was able to meet. As the head and also a sales person, he was given a van for distribution to his customers and the remaining items were always intact when he was solely in charge of the van. At a time, he was not solely in charge of the van and during that period, goods kept missing, which management was aware of. He has been

served with several invoices signed by the accountant alone, which do not follow the required process for goods to be released to a salesperson. The company failed to hire the services of an external auditor to audit the company and the reconciliation performed by the company was inaccurate.

### **EMMANUEL JORDAN TETTEH**

The witness for the accused testified as a former staff of KCL. His evidence is that sales process and operations at KCL was not to be trusted. The company was not fully supervised on activities from sales to reconciliation and that there were times he faced a lot of differences in his account which he could not trace the losses from. He had to offset his monthly income to pay for the losses and had no option than to resign when it continued severally.

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

As stated supra, prosecution must prove all the three ingredients of stealing, being property of which accused is not the owner, dishonesty and finally appropriation.

Prosecution led evidence to show that the accused had taken money that was not his own. Accused, on the other hand, tried to defend himself that he did not appropriate any sum dishonestly and that it would have been appropriate for the company to appoint an external auditor to assist with the reconciliation.

To begin with, I find it worthwhile to refer to the statement made by the accused to the police, which is Exhibit ‘P’ series. Accused stated in Exhibit ‘P’ series as follows;

*“During the lockdown in Ghana, our company was not actively working so I took this opportunity to collect some monies owed by some debtors and diverted some into different business anticipating to get some profit and bring it back. The business failed and now my manager is on me to refund the amount which I have taken. I cannot challenge them with the total amount owed of GH¢31,823.60. I will be able to reconcile with some few debtors and pay back the amount when given time.”*

The above statement was made voluntarily to the police on 5<sup>th</sup> June, 2020, and was not objected to when tendered in court. The subsequent defence put up by the accused is totally different from the statement he voluntarily made to the police at the time the matter was fresh in his mind. I find the statement made by the accused to the police as an admission by him of taking some money belonging

to the company without due authorisation. Accused, in his evidence to the court, did not produce any authorisation by the company in respect of the ‘different business’.

Section 120 of Act 29 defines dishonest appropriation as follows:

*“(1) An appropriation of a thing is dishonest*

*(a) if it is made with an intent to defraud, or*

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

I have further considered Exhibits ‘G’, ‘H’, ‘J’, ‘K’, ‘L’, ‘M’ and ‘N’, which all speak to invoices generated in the names of the company’s back office customers and to whom no or less goods were supplied. Some of the customers were surprised to be informed that they owed the company, when in reality, they did not. For instance per Exhibit ‘G’, upon retrieving money from the company’s customers and failing to pay to the company, accused produced his own debtors’ list which made his account balance. In an attempt by the company to confirm his debts, it was discovered that most of the customers were not owing up to the amount he provided. It was also discovered that about five customers that accused ordered for stocks in their names did not receive any goods at all. The goods were rather sent to customers that the company did not know. According to Exhibit ‘G’, the total unconfirmed debt is GH¢57,062.60 whilst the stolen amount suspected is GH¢31,823.60. All the Exhibits mentioned in this paragraph point to dishonest appropriation of the company’s money.

Having considered the statements of the accused to the police as well as the total evidence given in court, I find the accused as dishonest in his dealings with the company’s money and goods. I find that there was appropriation of the company’s money and goods by the accused, without any claim of right and that the appropriation was without the consent of the company.

Accused, in his defence, sought to challenge the authenticity of the invoices in respect of the total amount involved. According to the accused, the invoices could only be a reflection of the goods he took if they had three signatories as required; being the signatures of the accountant, the warehouse manager and himself. This evidence was corroborated by the witness of accused, which was not successfully

challenged by prosecution, irrespective of the fact that he worked with the company for a brief period. I have noted that some of the Exhibits in the ‘D’ ‘E’ and ‘F’ series tendered by prosecution have been signed by the three persons mentioned, whilst some only have the company’s stamp. PW1, under the cross-examination, summed it up as follows; “To be fair to the court, I decided to bring all invoices, whether signed or unsigned, paid or unpaid.” From these, I find that accused was able to establish that he took some of the goods, but not all that prosecution had charged him for. Does this then absolve the accused of guilt? I do not think so, so far as the ingredients of stealing have been established. I have further noted that the signed invoices also fall within March and April, 2020, thus in accordance with the periods of the offences as charged.

Prosecution thus proved all the essential ingredients of the offences and accused could not provide a reasonably probable explanation. The doubt he was able to raise was only in respect of the total amount dishonestly appropriated. I, therefore, find him guilty on the charges of stealing and I accordingly convict.

#### **SENTENCE**

I have considered the age of the accused at the time of the offence and the fact that he is a first time offender. I have further considered the intrinsic seriousness of the offence and the degree of revulsion felt by law-abiding citizens of the society of the crime of stealing.

I hereby sentence the accused to twelve (12) months’ imprisonment and a fine of three hundred (300) penalty units or in default, two (2) years’ imprisonment for both counts, to run concurrently.

The company is to take steps to properly reconcile the accounts with the accused to enable him to pay the amount as appropriated.

**Her Honour Mawusi Bedjrah**