

**IN THE CIRCUIT COURT WEIJA BEFORE HIS HONOUR JAMES KOJOH BOTAH
SITTING ON THURSDAY 3RD AUGUST, 2023.**

COURT CASE NO. C7/62/2023

THE REPUBLIC

VRS

EMMANUEL NANA YAW

ACCUSED PRESENT

COMPLAINANT PRESENT

CHIEF INSPECTOR MICHAEL BETEH FOR THE PROSECUTION PRESENT

JUDGMENT

On 22nd February, 2023 the accused person was arraigned before this Court charged with two (2) counts of stealing contrary to Section 124 (1) of the Criminal and Other Offences Act, 1960 (Act 29). He pleaded not guilty to the charges. An application for bail was made for the accused by his Counsel at the time. However, the Court considered the Accused as a flight risk and refused him bail.

To prove its case against the accused, the prosecution called two (2) witness namely PW1 Joshua Sam, the Complainant and PW2 PW/D/Inspector Gaikpa Perpetual the investigator in the case.

PW1 testified that on 1st February, 2023 at about 8:15 am he was in the Mobile Base Ventures shop at Weija SCC Junction when the accused came and requested to buy a mobile phone. After examining one of the phones, accused expressed interest to buy a large number of the phones to sell at his shop in Weija if the prices were moderate. At the request of accused, PW1 brought out ten (10) different types of smart phones and displayed them on the counter for the accused to see. According to PW1, the accused asked him to label the phones with their respective prices. PW1 told the Court that whilst he was labelling the phones with their prices as requested by accused,

the accuse ordered for twelve (12) keyboard phones. So PW1 stopped the labelling of the smart phones and then produced the keyboard phones the accused additionally requested for. Accused then asked PW1 to also label the keyboard phone. PW1 said the accused further requested for eight (8) different smart phones and again asked PW1 to label them with their prices. Accordingly, to PW1, the accused told him that he was going to buy a polythene bag to pack the phones in it. After a short while the accused returned and expressed concern about the length of time PW1 was using to label the phones and then told PW1 that he was in a hurry to leave the shop. As PW1 rushed to finish the labelling of the phones, the accused ordered for more keyboard phones and also asked PW1 to label them with prices. Accused further requested for more phones, protectors and covers. As PW1 was removing the phone protectors and covers from the stand in the shop, the accused left the shop to go and buy price tags.

PW1 informed the Court that, after the accused left the shop, he took one of the protectors to see if it marched the smart phone and then realised that the boxes of three (3) of the smart phones were empty. PW1 said he came out of the shop and then saw the accused running away and then boarded a trotro bus at the SCC bus stop. PW1 also entered a trotro bus and then followed the accused. PW1 said the driver of the trotro bus he entered crossed the trotro bus the accused was sitting in at Bortianor Junction and the accused jumped from the moving bus and started running away. PW1 told the Court that he got down from his trotro bus and pursued the accused and then arrested him. PW1's shouts of thief drew people to the scene. Sensing danger, accused indicated that he has put the phones at the back of the seat of the trotro he sat in. The driver's mate searched the trotro bus and then found five (5) smart phones under the back seat of the trotro bus the accused sat in all valued at GH¢6,788.00. According to PW1, the accused was escorted to the shop. PW1 saw three (3) keypad phones valued GH¢ 465.00 wrapped inside a polythene bag. Upon a check, PW1 said he detected that accused had stolen nineteen (19) keypad phones and twelve (12) smart phones from the shop. Accused was handed over to the SCC Police Station.

PW2 investigated the case and then obtained an investigation cautioned statement and a charged sheet statement from the accused.

In defence of the charges, the accused testified that he went to the complainant's shop to buy a phone. However, he could not buy the phone he wanted because the price was beyond his means. So he left PW1's shop with the intention of going to another shop to buy the phone at an affordable price. Accused said he stopped a commercial vehicle and as he was about to enter it, he heard PW1 shouting 'thief thief' while pointing his finger at him. A crowd started gathering at the scene and out of fear for his life he boarded the vehicle and left. PW1 also entered a commercial vehicle and pursued him. The driver of PW1's vehicle veered into the path of the vehicle accused was sitting thus compelling the vehicle to come to a halt. Accused said he got down from his vehicle. PW1 shouted at him that he is a thief and should be arrested and when he inquired of his offence, PW1 accused him of having stolen 39 of his phones. His pockets were searched but nothing was found on him. According to accused, the crowd that gathered at the scene subjected him to beatings and he was told to speak the truth, but he told them he was innocent of PW1's accusations. PW1 held out a polythene bag containing empty phone boxes and told the crowd that the empty phone boxes prove that accused indeed stole the phones. Accused said the beatings he was receiving from the crowd intensified. However, a police officer who saw what was happening intervened and suggested that the accused should be taken to the police station. Accused told the Court that when they were going to the police station, PW1 brought out five (5) mobile phones and then showed them to the police officer. PW1 told the police officer that he retrieved the five (5) phones from the commercial vehicle the accused was riding in.

The issues for determination in the Judgment are:

- 1) Whether or not on 1/2/23 the accused stole five (5) smart phones from the complainant's shop with a total value of GH¢ 6,788.00, and
- 2) Whether or not on the same date the accused also stole twelve (12) smart phones and twenty (20) keypad phones from the complainant's shop all valued at GH¢ 18,212.00.

In criminal trials, the burden of proof is generally in the prosecution to prove the guilt of the accused beyond reasonable doubt. See Commissioner of Police v. Isaac Antwi [1961] GLR 408-412 and Donkor v. The State [1964] GLR 598 SC.

In respect of the charges against the accused person, Section 124 (1) of Act 29 provides that a person shall be guilty of a second degree felony if he steals. Section 125 of Act 29 says that a person steals if he dishonestly appropriates a thing of which he is not the owner.

The basic elements of the offence of stealing as stated in the case of Ampah v. The Republic [1977] 2 GLR 171 CA are dishonestly, appropriation and property belonging to another person.

The prosecution's evidence in support of Count one (1) of the charge sheet is that on the day of the incident the accused went to the complainant's mobile phone shop at Weija, SCC Junction ostensibly to buy a mobile phone. The accused managed to convince PW1 the complainant that he was interested in buying a large number of the phones for him to sell at his shop. While PW1 was labelling the phones at the request of the accused, the accused succeeded in stealing a large quantity of PW1's phones and then made away with them in a trotro bus, until luck eluded the accused when he was arrested by PW1 and others with some of the phones. The accused person's defence was a complete denial of the charges.

The particulars of offence of Count one (1) of the charge sheet says that the accused dishonestly appropriated five (5) different models of smart phones being the property of PW1 valued at GH¢6,788.00. I find from the evidence that when the accused was arrested and the driver's mate searched the trotro bus the accused was riding in, five (5) smart phones were found under the back seat of the bus. In his investigation cautioned statement made to the police on 1/2/23, the accused stated that while PW1 was removing phone accessories, he took advantage of the situation then stole the five (5) smart phones and put them in his pocket and then went out of the shop, boarded a trotro bus and left. Obviously when the accused realized that PW1 was giving him a hot pursuit in another trotro bus, he hid the five (5) smart mobile phones under the seat of the trotro bus with the intention of concealing his crime. His luck however run out with the discovery of the five (5) phones. The accused person's act of appropriating the five (5) phones,

property of PW1 to label a large number of phones he had no intentions of buying only for him to pocket five (5) different smart phones at the blind side of PW1 and he made away with the booty. I am satisfied that the prosecution has established all the ingredients of Count one (1) of the charge sheet. Accordingly, I find accused guilty on Count one (1) of the charge sheet and hereby convict him.

Count two (2) of the charge sheet recites that on the same day of the incident the accused also dishonestly appropriated twelve (12) other smart phones and twenty-two (22) key pad phones valued at GH¢ 18,212.00. The accused denied the second count both in his Evidence-In-Chief and also in his investigation cautioned statement. I have searched through the evidence on record, and I have no evidence in proof of Count two (2) of the charge sheet. In the absence of convincing evidence from prosecution to prove same, the second charge slapped on the accused will remain a mere allegation. The prosecution has failed to prove Count two (2) of the charge sheet. The accused is accordingly acquitted and discharged on the second charge.

BY COURT: Accused you have been found guilty on Count one (1) of the charge sheet and convicted. What do you have to say in mitigation of your sentence.

Accused: I plead for leniency. I have been in police custody for six (6) to seven (7) months leaving my children at home. I pray for the Court's mercy.

BY COURT: Prosecution, is the accused known to the law.

Prosecution: No, I pray for a deterrent sentence for the accused. We have received several complaints from the shop owners about the acts of the accused. Since his arrest the area has been calm.

BY COURT: The accused is a first time offender. He has pleaded for leniency from the Court. The Court also takes Judicial notice of the fact that the accused has remained in police custody since 22/2/23 pending his trial. Taking all these factors into consideration, I hereby sentence the accused in respect of Count one (1) of the charge sheet to pay a fine of two hundred (200) penalty units to the Republic of Ghana or in default serve six (6) months imprisonment with hard labour.

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H/H JAMES KOJOH BOTAH
CIRCUIT COURT JUDGE