

IN THE CIRCUIT COURT WEIJA-ACCRA BEFORE HIS HONOUR JAMES KOJOH
BOTAH SITTING ON MONDAY THE 16TH DAY OF OCTOBER, 2023.

CC NO. C9/1/2023

THE REPUBLIC

VRS:

1. RASHID INUSAH - A1
2. MOHAMMED @ LARGE - A2
-
-

ACCUSED – PRESENT

COMPLAINANT – ABSENT

C/INSPT. GOERGE ANTWI FOR PROSECUTION – PRESENT

JUDGMENT

1. INTRODUCTION

Per the charge sheet filed in this Court on 19/4/2023, A1 and A2 have been charged jointly with two (2) counts of causing unlawful damage contrary to section 172 of the Criminal and Other Offences Act, 1960 (Act 29) and Stealing contrary to Section 124(1) of Act 29.

A1 was singularly arraigned before the Court differently constituted on 23/1/2023 and the charges read and explained to him in the Dagbanie Language. A1 pleaded not guilty to the charges and was refused bail and remanded into Police custody on the ground that he is a flight risk.

A2 is said to be at large and yet to be arrested by the prosecution to face the charges.

2. THE CASE OF THE PROSECUTION

The prosecution called two (2) witnesses to prove its case against A1, namely, PW1, Jackson Boamah, the Complainant and PW2 D/PW/Sgt. Matilda Akoto, the investigator in charge of the case. PW1 testified that, he has worked with Adams from 2018-2022 at the Global Prayer and Retreat Centre. According to PW1, Adams later decided to return to Tamale and then suggested A1 and A2 as his replacement. PW1 said A1 and A2 worked with them for Six to Seven months as security men. A1 was in charge of ensuring security at the Guest House. He lived in the Guest House and worked from 6:00am to 6:00pm. A2 was in charge of the main camp and was given accommodation close to the main camp. A2 worked from 6:00pm to 6:00am.

PW1 informed the Court that on 22/12/2022 they detected that the main window located at the back of the office had been broken into. When the office was opened, they saw that the office safe has been taken, dumped on a refuse dump and broken into. An amount of GH¢8,250.00 was stolen from the safe. Two lap tops with model as HP and Lenovo and a Hi Sense TV Set were also stolen. PW1 told the Court that he reported the case to the SSC Police Station and gave his statement to the Police.

PW1 further informed the Court that he called Adams and told him what has happened. PW1 told Adams to go to A1's house to verify if he was there. PW1 said Adams confirmed to him that A1 was there, and that Adams saw the Laptops and the TV Set in A1's room. PW1 further said that he told Adams that they needed the laptops because of the data they contained, so Adams should find out from A1 whether he was willing to sell the Laptop to him, but A1 did not budge. PW1 said upon his request, Adams reported A1 to the Tamale Police and A1 was arrested.

PW2 testified that on 21/12/2022 he was on duty as detective at the Weija Police Station when the Complainant PW1 came and lodged a complaint that the accused persons who are security guards at his company had abandoned their post and made away with a Lenovo Laptop, an HP Laptop and a 24 inches T.V. Set and an amount of GH¢8,250.00. PW2 obtained a statement from PW1.

PW2 told the Court that on 31/12/2022 the Weija Police received information from Tamale Police that A1 has been arrested in his hideout at Tampion and detained by the Police in Tamale. The Tamale Police subsequently handed over A1 to the Weija Police together with the retrieved items. PW2 later obtained an investigation cautioned statement and a charged statement from A1.

3. FINDING A PRIMA FACIE CASE

After hearing the evidence adduced by the prosecution in support of the charges against A1, the Court on 14/2023 ruled that the prosecution has succeeded in establishing a prima facie case against A1 sufficient enough to warrant calling upon A1 to enter into his defence. S.A. Brobbey JSC (Retired) in Essentials of the Ghana Law of Evidence (2014) wrote at page 67 of the book as follows:

“The effect of the case of the prosecution is usually to establish a prima facie case against the accused. When that happens, the burden may shift from the prosecution to the accused or the defence.”

4. THE CASE OF THE ACCUSED

The accused testified that he was paid GH¢700.00 for the work he did as security personnel at the Global Prayer and Retreat Center, New Weija-Accra. Accused said he complained that the money was not enough and therefore wanted to return to the Northern part of the Country. Accused told the Court that he worked for two months and fifteen days at the Complainant’s retreat center. In the third month of his

employment, he told the complainant's retreat centre that he wanted to travel. According to accused, the complainant's retreat centre refused to pay him for the fifteen days he worked for the reason that he had not worked for the whole of the third month for him to be paid.

The accused further testified that when he arrived in Tamale, a colleague of his who also works at the complainant's retreat centre called him on phone and informed him that he was also in Tamale and was unable to board a bus to his village. Accused said he went to the station, picked up this colleague of his and brought him to his home. According to accused his colleague came with a "Ghana Must Go Bag; A TV Set and two Lap Tops. Accused said the gentleman left the items in his room and went to his village.

Accused intimated to the Court that another working colleague of his by name Adam called him and informed him that he was coming to his place in Tamale. Adams came and the two of them had a conversation concerning Adams' intended marriage. Accused said after Adams left his place, the Police came and arrested him and brought him to the Police Station. The Police then asked the accused where he got the TV set and the Lap Tops from. Accused said he told the Police that, he had no knowledge about the item. Adam then told the Police that he saw the TV Set and the Lap Tops in the accused person's room. In response to this, accused said he told the Police that the items seen in his room belong to Mohammed, that is, A2 at large.

Accused informed the Court that he suggested to the Police to take them to A2's house, but the Police refused to co-operate with him insisting that since the items were found in his room he took them. Accused said the Police later brought him from Tamale to Accra together with the retrieved items. Accused told the Court that he is innocent of the charges.

5. ISSUES FOR DETERMINATION

(1) Whether or not on 21/2/2022 A1 intentionally and unlawfully caused damage to an office safe property of Global Prayer and Retreat Centre, New-Weija, Accra; and

(2) Whether or not on 21/12/2022, A1 dishonestly appropriated two Laptops, a TV Set and an amount of GH¢8,250.00 belonging to Global Prayer and Retreat Centre, New-Weija, Accra.

(6) **THE PRESUMPTION OF INNOCENCE**

Article 19(2) (c) of the 1992 Constitution provides that:

“19(2)(C) A person charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty”.

Per the above constitutional provision, a person charged with a criminal offence is not guilty of the crime charged right from the time of his arrest to the time of his arraignment before the Court. It is only after he has by himself pleaded guilty to the charges that he may be pronounced guilty or if he pleads not guilty, his guilt must be proven through evidence at trial.

7. **THE BURDEN OF PROOF ON THE PROSECUTION**

The burden of proving the guilt of an accused who has pleaded not guilty to a criminal offence is placed squarely on the shoulders of the prosecution. This is so because the prosecution is the party who has initiated criminal proceedings against the accused on the premises that he has committed an offence. The evidential principle that “he who asserts assumes the onus of proof” is applicable to the prosecution. Sections 11(1) and 15(1) of the Evidence Act, 1975 (NRCD 232) thus places, on the prosecution the burden of proving the guilt of the accused beyond reasonable doubt. See also **Commissioner of Police v. Isaac Antwi** [1961] GLR 408-412 per Korsah CJ. In the case of **Donkor v. The**

State [1964] GLR 598 SC, it was held that where the prosecution fails to prove the guilt of the accused beyond reasonable doubt, the accused must be discharged.

8. ELEMENTS OF THE CHARGES THE PROSECUTION MUST PROVE

Section 172(1) of Act 29 under which A1 has been charged provides:

“172 (1) Whoever intentionally and unlawfully causes damage to any property by any means whatsoever-

(a) to a value not exceeding one million cedis or to no pecuniary value, shall be guilty of a misdemeanor;

(b) to a value exceeding one million cedis shall be guilty of second degree felony.”

The office safe belonging to the complainant’s company, A1 is said to have damaged intentionally and unlawfully is valued to be GH¢7,000.00. So the first count of the charges slapped on A1 falls within the purview of section 172(1) (b) of Act 29. From the provision, the prosecution must prove two (2) basic elements of the offence of unlawful damage levelled against the accused, namely:

- (1) That the accused person intentionally caused damage to the property; and
- (2) That the accused person unlawfully caused the damage.

A1 has also been charged under Section 124(1) of Act 29. The Section provides as follows: -

“124(1) Whoever steals shall be guilty of a second degree felony.”

Section 125 of Act 29 defines stealing as:

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

In the case of **Ampah v. The Republic** [1977] 2GLR 171 CA the Court of Appeal identified the elements of stealing as dishonesty, appropriation and property belonging to another person. Thus to succeed in proving a charge of stealing against a person, the prosecution must prove the following:

- (1) That the person charged must not be the owner of the thing allegedly stolen;
- (2) That he must have appropriated the thing; and
- (3) That the appropriation must have been dishonest.

9. EVALUATION OF THE EVIDENCE ON RECORD

To succeed in securing a conviction against A1 in respect of Court one of the charge sheet, the prosecution must adduce evidence to prove beyond reasonable doubt that A1 intentionally and unlawfully caused damage to the office safe of the complainant's company. In his evidence, PW1 said they detected that the main back window of the company's office had been broken into with the office safe taken to a refuse dump and broken into. Apart from the above pieces of evidence, PW1 gave no indication as to who broke into the office of the Company on 21/12/2022, removed the office safe, dumped it at the refuse dump, and broke into it stealing its contents. The investigator, PW2 investigated the case, but the investigation did not disclose who caused the damage to the office safe. In his investigation cautioned statement and also in his evidence in Chief, A1 said he is innocent of the charges levelled against him. It is not enough to suspect that A1 might have caused damage to the company's safe just because he worked there as a security personnel, and then later on left the complainant's company. The prosecution is not expected to rely on suspicions but to prove with evidence beyond reasonable doubt that on the day of the incident A1 broke into the office of the complainant's company and damaged the office safe. The prosecution has not been able to adduce evidence to satisfy me that on 21/12/2022, A1 committed the offence alleged in count 1 of the charge sheet. On the basis of the

evidence on record, I do not find A1 guilty of count 1 of the charge sheet and hereby acquit and discharge him.

In respect of the second Count, PW1 testified that when they found the broken into office safe on the refuse dump, they discovered that an amount of GH¢8,250.00 contained in the safe was stolen. PW1 added that a TV set and two laptops belonging to the company were also stolen. Per the prosecution's evidence the finger is pointed to A1 and A2 now at large as those responsible for breaking into the complainant's office and stealing the items mentioned in the charge sheet.

In his investigation cautioned statement, A1 stated that he did not steal anything from the company. According to him on 21/12/2022 he packed his belongings and came to Tamale without informing the Company's Director that he had resigned. A1 gave the reason for his leaving the company as poor salary payment and lack of food from the company. PW1 and PW2's evidence, linking A1 to count 2 of the charge is based on circumstantial evidence and not direct evidence. The finding of the TV Set and the two Laptops by Adams in the room of A1 in Tamale creates the strong circumstantial evidence that A1 might have stolen the items. But his defence is that he left Accra on 21/12/2022 to Tamale. On 23/12/2022, A2 also came to Tamale and then brought the items to him to keep for him and that he has no idea about how A2 brought the items from Accra to Tamale. A1 and A2 were both security personnel at the company before they left Accra to Tamale on separate days. It is possible that A1 did not know that the items A2 brought to him to keep were stolen items from the complainant's company. Adams was a previous worker at the company, and it was he that PW1 sent to A1's house in Tamale to see if the stolen items were with A1. Adams indeed saw the stolen items in A1's room and reported him to the Tamale Police leading to the arrest of A1. However, Adams never testified to support the prosecution's case, so that A1 could have had the opportunity to cross-examine him. In the case of Mali

v. The State [1965] GLR 710 the Court held that if at the end of the case the Court requires further evidence in order to decide an issue raised in the case for the prosecution, the inference is that the prosecution has not made out a case and the accused should be discharged. In my opinion, there is no convincing evidence linking A1 to count 2 of the charge sheet. Up to date A2 who was jointly charged with A1 is at large and has not been arrested by the prosecution to face the charge just like A1. The prosecution and cross-examination of A2 by the prosecution and A1, would have revealed whether indeed A2 left the stolen items in A1's room as A1 is alleging. I cannot convict A1 on count 2 on the basis of circumstantial evidence alone and also when A1 has mentioned A2 at large as the one who brought the items from Accra to his place in Tamale for safe keeping. For the above reasons, I also acquit and discharge A1 on count 2 of the charge sheet.

Evaluating, the evidence as a whole, I do not find A1 guilty of the offences charged and hereby acquit and discharge him.

H/H JAMES KOJOH BOTAH
CIRCUIT COURT JUDGE

