

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON WEDNESDAY, 12TH JULY, 2023

SUIT NO. D7/9/22

THE REPUBLIC
VRS
RONALD KWABENA QUANSAH HAMMOND

JUDGMENT

The accused person is before this Court on eight counts of stealing contrary to *Section 124(1) of the Criminal Offences Act, 1960 (Act 29)* and one count of fraudulent breach of trust contrary to section 128 of the even Act.

Per the particulars of offence for count one, two, three, four, five, six, seven and eight, are that on or about the April 16th 2021, April 16th 2021, April 19th 2021, April 21, 2021, April 29, 2021, April 29th April, April 29th 2021 and on the 4th May, 2021, within the jurisdiction of the Court, the accused person dishonestly appropriated 200 bags of soya bean meal valued at Ghs 38,000, 240 bags of soya bean meal valued at Ghs 45,600, one thousand bags of soya bean meal valued at Ghs 190,000, 300 bags of soya bean meal valued at Ghs 57,000, 300 bags of soya bean meal valued at Ghs 57,000, 200 bags of soya bean meal valued at Ghs 38,000, 500 bags of soya bean meal valued at Ghs 95,000 and 800 bags of soya bean meal valued at Ghs 152,000, the property of Best Grains Company Ltd, Kumasi.

The particulars of offence for count nine are that on the even date, time and place and within the jurisdiction of this Court, he dishonestly appropriated 3,540 bags of soya

bean meal valued at Ghs 672,600, vested in him as a trustee by Flour Mill Ghana Ltd. to hold same in trust for Best Grains Company Ltd, Kumasi.

The accused person pleaded not guilty to all nine counts and by so doing, cast the burden of proving his guilt on the Republic. By his plea, he had invoked the Constitutional guarantee in Article 19 of the 1992 Constitution, and he stood shielded by the law as per *Article 19 (2) (c) of the 1992 Constitution*, he is presumed innocent until proven guilty.

According to the case of *Davis v. U.S. 160 U.S 469(1895)* "Upon that plea the accused may stand, shielded by the presumption of his innocence, until it appears that he is guilty; and his guilt cannot in the very nature of things be regarded as proved, if the jury entertain a reasonable doubt from the evidence".

The presumption of innocence guaranteed under the 1992 Constitution, is not cast in historic concrete like King Arthur's sword. That guarantee is that he is presumed innocent *until prosecution* has been able to lead evidence to establish his guilt beyond reasonable doubt.

That being so, prosecution may lead credible and positive evidence to upset that presumption. A court thus commences a criminal trial where an accused has pleaded not guilty on the rebuttable presumption that the accused person is innocent until proven guilty. The onus lies on prosecution to lead material, relevant and credible evidence to establish a prima facie case against the accused persons by the close of their case.

It is only then, that prosecution would be deemed, prima facie to have upset the presumption of innocence in favour of the accused and he would in turn be called upon

not to prove his innocence, but to raise a reasonable doubt in the mind of the Court as to his guilt.

In the case of *Gligah & Atiso v. The Republic* [2010] SCGLR 870 @ 879 the court held that *“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 is arraigned before any court in any criminal trial, it is the duty of prosecution to prove the essential ingredients of the offence charged against the accused person beyond any reasonable doubt. The burden of proof is therefore on the prosecution and it is only after a prima facie case has been established by the prosecution that the accused person would be called upon to give his side of the story.*

Five witnesses; including the complainant and the investigator, testified for the Republic.

EVIDENCE OF PW1

According to PW1, he is the managing director of Best Grains Ltd. That for the past four years, they have been distributors of Flour Mills of Ghana products. That although he and the accused person have never met, he knows the accused as a representative of Bill logistics Ltd.

That per the arrangements of Flour Mills Ghana Ltd, anytime they required flour, they had to make a request through the regional representative by name Mark Owusu Agyeman. The regional representative would then contact Bill logistics to transport the flour to them in Kumasi.

He continued that in April, 2021, they placed an order for the supply of 20,000 bags of soya bean meal and made payment for 19,000 bags. He thereafter requested the regional representative to supply part of the consignment. Bill logistics, through the accused

person then delivered 14,280 bags to them between the 15th to 30th of April, 2021. Their warehouse became full and so they informed the regional representative to hold on to the remainder of their stock which was yet to be delivered.

That on the 4th of May, 2020, he requested for the delivery of the outstanding 4720 bags of soya bean meal only to be informed that his company only had 180 bags. That through checks at Flour Mills Ghana Ltd, it was detected that the accused person fraudulently misrepresented that he had the authority of PW1's company to take delivery of the remainder stocks and between 15 April to 4th May, took delivery of 4,540 bags of soya bean meal.

That prior to the accused person dishonestly appropriating their flour, he had agreed for the accused person to sell 1000 bags of their flour to a client of his (accused) after accused person pleaded with him. The accused person deposited Ghs 194,000 into his account. That he was waiting for the accused person to complete payment before ordering flour mills to supply the goods but accused person fraudulently misrepresented that he had his authority and took the 1000 bags.

The accused person based on his false representation took delivery of various quantities of soya bean meal on the dates indicated in the charge sheet. One Benedict Ewura confirmed that he had assisted a client of his to purchase 500 bags from the accused person.

The said Benedict also assisted them to retrieve 600 bags from one Christiana Afia Lariba. The said Lariba had paid Ghs 30,000 into The Stanbic Bank account of the accused person and same was frozen by the Financial Centre.

THE EVIDENCE OF PW2

PW2 testified and said he was the director of Bill logistics. That accused person was the company representative stationed at Flour Mills Ghana Ltd. That in May, 2021, he went to Flour Mills to find out from the accused person why business had slowed down.

That prior to this, he could not reach the accused person on any of his phones. He was however informed by officials of Flour Mills of Ghana that the accused person had received 4540 bags of soya bean meal for onward delivery to Best Grains Ltd within the month of April and May and had failed to make delivery.

That the accused person had misrepresented to Flour Mills of Ghana that he had the consent of Best Grains to receive the goods when in fact Best Grains had not authorized him to do so. That the accused person went into hiding after this.

Accused person was later arrested and he confessed having taken delivery of the said bags of flour meant for Best Grains without their consent. That accused person indicated that he had obtained the consent of PW1 to sell 1000 bags to a client.

Based on PW1's agreement, he paid Ghs 194,000 out of a total of Ghs 195,000 to PW1. He then went ahead to represent to Flour Mills Ghana Ltd that PW1 had authorized him to load their remaining 4540 bags of soya bean meal.

THE EVIDENCE OF PW3

PW3 testified as a staff of Flour Mills Ltd. According to her, PW1's company has a distributorship relationship with their company. That it is the accused person who as a representative of Bill Logistics has been transporting goods to PW1's company. That

Flour Mills has an Ashanti representative who co ordinates orders made by customers as well as delivery schedules.

She continued that sometime in April, 2021, PW1's company ordered 19,000 bags of soya bean meal. That in the course of the accused person transporting the goods, he came to inform her that PW1 had asked him to sell some of the goods for him. That she should notify him if she knew of any customers who were in need of some of the goods.

That she believed the representation of the accused person because she had encountered several distributors who sometimes sought from the sales staff to sell off some of their stock. That she passed on two customers by name Nicholas and Kennedy to the accused person. The two purchased 1500 and 1240 bags of soya bean meal from the accused person.

It was when PW1 requested for delivery of his remaining stock through their Ashanti representative that they realized that PW1 had not authorized the accused person to sell the goods. Their investigations led to one Lariba whom the accused had sold 800 bags of the flour to. They retrieved 600 bags of flour and the said woman informed them that she had already paid Ghs 30,000 to the accused person for the 200 bags with a remaining balance of Ghs 9,000 which she paid to PW1.

THE EVIDENCE OF PW4

In his evidence in chief, PW4 said he was the one who used to transport goods purchased by Best Grains Ltd from Flour Mills until Flour Mills brought in Bill Logistics. That PW1 introduced accused to him on phone and he realized that he knew the accused person very well.

That on 30th April, 2021, the accused person informed him that he had soya bean meal to sell. He in turn told one of his customers who purchased 500 bags at a cost of Ghs 97,500. That the customer paid the money through his Ghana Commercial bank account and he withdrew same and handed it to the accused before the stock was loaded.

That it was not until PW1 contacted him on 10th May, 2021 that his soya bean meal was missing that his checks checks revealed that the soya bean meal accused person sold through him to the customer belonged to PW1's company.

That he was able to trace 800 bags of the flour that had been sold to one Lariba by the accused person and retrieve 600 bags. That the customer said she had paid Ghs 30,000 to the accused person for the 200 bags with a remaining balance of Ghs 9,000 which she paid to him. He then handed it to PW1.

THE EVIDENCE OF PW5

PW5 is the investigator. Her evidence is that it is PW2 who reported the matter to the police. in the course of investigations, she took statements from the various witnesses. She also found out that accused person had deposited some of the proceeds into his Stanbic bank account and so she wrote to the Financial Intelligence Centre and had the account froze. That investigation also led to the retrieval of some of the products.

Further that when investigations were closing in on the accused person, he went into hiding in Nigeria. He was arrested when he resurfaced in August, 2021. Accused person admitted the offence and was charged accordingly.

She tendered in evidence the investigation caution, further investigation caution statement, a charge statement and a further charge statement of the accused person as EXHIBIT A, A1, B and B1 respectively.

She also tendered in evidence various invoices of flour mills Ghana which showed orders by Best Grains Ltd as EXHIBIT C series.

EXHIBIT D series are the police request for information of the accused person from the Financial Intelligence Centre as well as the information received from the financial intelligence Centre. It also includes the publication of accused person, then a suspect's details in the police wanted list.

EXHIBIT E series are bank advice slips indicating various amounts paid into the accused person's Stanbic Bank account as well as payment made to PW4's Ghana Commercial bank account. EXHIBIT F is a receipt on oath indicating the retrieval of the 600 bags of soya bean meal as well as the payment of Ghs 9,000 from Lariba

Prosecution closed its case after this.

Section 173 of the Criminal Procedure and Other Offences Procedure Code, 1960 (Act 30) provides that; "If at the close of the evidence in support of the charge, it appears to the Court that a case is not made out against the accused sufficiently to require him to make a defence, the Court shall, as to that particular charge, acquit him."

Thus a court is under a duty at the close of prosecution's case, to find out whether from the evidence on record, prosecution has established a case sufficiently against and accused person that requires him to answer. In deciding whether or not a case is made out against the accused sufficiently to require him to make a defence, the Court must make these considerations;

The first is whether prosecution has led evidence to establish all the requisite elements of the offence. Secondly, whether the evidence has not been so discredited under cross examination, thirdly, whether the evidence is reliable and the court can safely convict on it if the accused person exercises his constitutional right of silence when called upon to open his case and finally, that the evidence on record does not lend itself to two interpretations; one of guilt and one of innocence. Where the evidence is evenly balanced and susceptible to a construction of guilt on one hand and of innocence on the other hand, then the court must arrive at a conclusion that the accused person has no case to answer and thus proceed to acquit and discharge him. See the cases *Apaloo And Others v. The Republic* [1975] 1 GLR 156) *Gyabaah v The Republic* [1984-86] 461 C.A and *Tsatsu Tsikata v. The Republic* [2003-2004] SCGLR 1068).

The definition section of the offence of stealing is **Section 125** and it provides that a person steals if he dishonestly appropriates a thing of which he is not the owner. The essential elements that prosecution has to prove to establish their case are;

1. that the accused person is not the owner of the various quantities of soya bean meal contained in count one through to count eight
2. that the accused person appropriated the said quantity of soya bean meal
3. that the appropriation was dishonest.

On the first element that accused person is not the owner of the soya bean meal, all prosecution witnesses testified that the said soya bean meal belongs to Best Grains Ltd as they had purchased it from Flour Mills of Ghana Ltd. PW1 is the managing director of Best Grains Ltd and his testimony is that his company purchased 19,000 bags of soya bean meal from Flour Mills of Ghana Ltd. PW3, as the representative of Flour Mills Ltd confirmed same.

The accused person cross examined all of prosecution's witnesses and did not challenge the evidence that the soya bean meal belongs to Best Grains Ltd. Indeed, his line of cross examination did not involve making a claim to the said products. In cross examining PW1, he had asked questions that asserted rather than disputed Best Grains ownership of the soya bean meal. Consequently, I find at the close of prosecution's case that they have led sufficient evidence to establish the first element of the offence.

In order to prove the second element of appropriation, prosecution must go **to section 122 (2) of Act 29**. According to the section "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".

On this element, all prosecution witnesses corroborated the claim that the accused person only had access to these soya bean meal flour by virtue of his position as the transporter of the said goods. The evidence of PW1 and PW3 are particularly material. Their evidence is that after Best Grains Ltd had received 15,000 out of its 19,000 bags of soya bean meal, it had to hold on for further delivery because it could not store the products.

The accused person being in charge as the transporter, convinced PW1 to sell 1000 bags (comprising of 500 bags on each occasion) to his client. Although the accused person was working with PW4 to transport the goods, he sold the initial 500 bags to PW4's client without informing Pw4 that it was from the consignment of Best Grains.

Thereafter, accused person made a false representation that PW1 had asked him to find customers to buy the remainder of his products and asked for her assistance in finding customers. PW3 then introduced accused person to two customers and accused sold 2,740 bags of soya bean meal to them.

All the prosecution witnesses also testified of how the accused person had sold 800 bags to one Lariba. In the course of investigations, 600 bags were recovered. She had already paid Ghs 30,000 into accused person's Stanbic account and paid a balance of Ghs 9,000 for the 200 bags she sold.

In cross examining PW3, she had admitted that goods cannot be loaded without the consent of the customer or regional representative. However, she had not indicated the form of consent. Her material evidence which the accused person failed to challenge is that the accused person, whom the company (Flour Mills of Ghana) had appointed as the transporter for Best Grains, had informed her that PW1 had asked him to sell the remainder of his stock. She took accused person at his words and found him customers whom accused person sold 2,740 bags to all without the consent of PW1. The accused person did not challenge this piece of evidence.

PW4 under cross examination by the accused person had also answered that it was the accused person who had all the loading documents of PW1's company and so even when he had to transport some of the soya bean meal to PW1's company, it was the accused person whom he contacted and who after confirming with PW1, gave some of the goods to load.

The sum of their evidence which went unchallenged is that if at all, Flour Mills took the words of the accused person rather than the regional representative or PW1 when it came to loading the goods even though that is not standard practice.

According to PW4, unbeknownst to him, one of these 500 bags was sold to his client. His evidence, just like that of PW3 concerning the sale of 2,740 bags to two customers not disputed by the accused person. Accused person also did not challenge the sale of 800 bags to Lariba. Save for the sale to PW4's customer, all the other sales were without the knowledge and consent of PW1. Accused person did not challenge the evidence that save for the initial 1000 bags which PW1 agreed for him to sell and for which he paid Ghs 194,000 instead of Ghs 195,000, he did not pay any of the proceeds of the other sales to PW1 or his company.

PW5 tendered in evidence EXHIBIT C series as evidence of the various quantities of soya bean meal that the accused person took delivery of from Flour Mills Ghana Ltd under the false representation that it was with the consent of PW1.

EXHIBIT C series are fifteen invoices (EXHIBIT C-C1, C2,C3,C4,C5,C6,C7,C8,C9,C10,C11,C12,C13 and C14) EXHIBIT C and C1 are dated 16th April, 2021 and are in respect of 200 bags of soya bean meal. The cost is Ghs 38,000. EXHIBIT C2 and C3 are dated the same date and are for 240 bags of soya bean meal. The cost is Ghs 45,600.

EXHIBIT C4, C5 and C6 are dated 19th April, 2021 and is for 1000 bags of soya bean meal at a cost of Ghs 190,000. EXHIBIT C7 and C8 are for 300 bags of soya bean meal at a cost of Ghs 57,000. EXHIBIT C9 and C10 are dated the 22nd day of April, 2021. It is 200 bags of soya bean meal at a cost of Ghs 38,000.

EXHIBIT C11 and C12 are dated the 29th day of April, 2021 and is for 500 bags of soya bean meal at a cost of Ghs 95,000. EXHIBIT C13 and C14 are dated the 4th of May, 2021 and are for 800 bags of soya bean meal at a cost of Ghs 152,000.

The accused person did not challenge any of these Exhibits or the fact that same were issued to him in respect of the said quantities of soya bean meal. I find prosecution witnesses credible in their evidence on this ingredient of the offence.

I find at the close of prosecution's case that the accused person had dealt with the soya bean meal of PW1's company with an intent that the company be deprived of the benefit of its ownership, or of the benefit of its right or interest in the thing, or in its value or proceeds.

The third and final element that prosecution must prove is that the accused persons appropriated the containers with a dishonest intention. Thus it is explained in *section 120 (1) of Act 29* that an appropriation of a thing could be deemed to be dishonest if it is proved that the appropriation was made:

- (i) with intent to defraud; or
- (ii) by a person without any claim of right; and
- (iii) with a knowledge or belief that the appropriation was without the consent of some person for whom he was a trustee or who was the owner of the property appropriated;

An intent to defraud is defined by *section 16 of Act 29* as “an intent to cause, by means of the forgery, falsification or other unlawful act, a gain capable of being measured in money, or the possibility of that gain to a person at the expense or to the loss of the other person”

The accused person had by his act of appropriating the soya bean meal of PW1's company made a gain that is capable of being measured in money. According to PW1, when he consented to the accused person taking out 1000 bags, he gave the accused person the price of one bag to be Ghs 195. Thus the accused person in appropriating the remainder of the 3540 bags made a gain which is Ghs 195* 3540. Out of this gain that the accused person made, the police in the course of investigations retrieved 600 bags from one of the persons the accused person had sold to.

EXHIBIT C series comprise of various invoices issued by Flour Mills Ghana Ltd. to the accused person in the name of Best Grains. From the evidence, these invoices were issued by Flour Mills upon the believe in the misrepresentation of the accused person that it was PW1 who had authorized him to sell the stock to customers.

That the accused person made these gains with the knowledge that it was without the consent of PW1 is not in issue. PW1 in his evidence said that save for the 1000 bags; he had no knowledge of the accused person's appropriation of the remainder of his soya bean meal. The accused person cross examined him vigorously but chose to dance around this crucial piece of evidence.

Accused person asked several questions about the initial 1000 bags and PW1's consent to same, however, he did not attempt to challenge or discredit the evidence that the remainder of the soya bean meal was sold by him without the consent of PW1 and he

kept the proceeds to himself thereby depriving PW1 and his company of their interest and benefit in the said soya bean meal.

PW5 tendered in evidence EXHIBIT E series. They are various payments made into accused person's Stanbic bank account by persons whom he had sold some of the soya bean meal to. It also includes payment made into PW4 Ghana Commercial Bank account which he in turn handed to the accused person for an initial 500 bags of soya bean meal. Accused person did not challenge this evidence that the proceeds from the sale came to him rather than PW1 or his company.

That establishes the final element of the offence that the accused person appropriated the soya bean meal with a dishonest intention. I find that prima facie, the accused person appropriated the soya bean meal of PW1's company with a dishonest intention.

One line of cross examination that the accused person had relied on was the inconsistencies as to the quantity of soya bean meal he was being accused of dishonestly appropriating. I did not find the inconsistencies as to the number of bags of soya bean to be material.

From the evidence on record, the police had begun the investigation on a premise of over 4540 bags. In the course of investigations, PW1 indicated that he had agreed for the accused person to sell 1000 bags. Clearly that had to be deducted from the initial quantity. It brought the figure then to 3,540 bags. Then about 800 bags including cash were recovered from one Lariba. That also had to be deducted. It however does not negate the fact that the accused person had dishonestly appropriated same and sold it to the said Lariba. I find the explanation as to the varying quantities acceptable.

At the close of prosecution's case, I found that they had established all three ingredients of the offence of stealing against the accused person. In the case of *Ampah v. The Republic* [1977] 2 GLR 171-179, the Court held that: "If these three essential elements are proved to the satisfaction of the court, the court will be bound to convict unless the accused is able to put forward some defence or explanation which 'can cast a reasonable doubt' on the case for the prosecution."

The evidence was not so discredited under cross examination, the evidence is manifestly reliable such that a court of competent jurisdiction can safely rely on same to found a conviction if the accused person elects to be silent in his defence and the evidence on record lends itself to only one explanation at this point, the prima facie case of guilt of the accused person. He was accordingly called upon to open his defence.

DEFENCE

Denning J (as he then was) in the celebrated case of *Miller v. Minister of Pensions* [1947] 1 All ER 372 at 373 held that. "The constitutional presumption of innocence of an accused person is that an accused is presumed to be innocent unless he pleads guilty or is convicted by a court. The presumption is rebutted when the prosecution establishes a prima facie case against the accused person and the accused shall be called upon to raise a reasonable doubt as to his guilt." See also the dictum of Dennis Adjei JA in the Court of Appeal case of *Philip Assibit Akpeena v. The Republic* (2020) 163 G.M.J 32

Accused person was called upon to open his defence. An accused person when called upon to open his defence does not have a duty to prove his innocence. His only duty if at all at this stage, is to raise a reasonable doubt in the mind of the court concerning the prima facie case established against him by the prosecution. Where he is able to raise a

reasonable doubt in the mind of the court, he must be acquitted and discharged. See *Bruce-Konuah v. The Republic* [1967] GLR 611 and Section 11(2) and (3) of NRCD 323.

In arriving at whether an accused has raised a reasonable doubt, the court must first consider whether his explanation is acceptable i.e whether it believes the explanation given by the accused. If it does not, it must proceed to find out whether the explanation by the accused is reasonably probable. If that fails, then thirdly, the court must consider the whole evidence on record and see if it raises any defence in favour of the accused. In any of these instances, the court must acquit and discharge the accused. If quite apart from the defence's explanation, the court is satisfied on a consideration of the whole evidence that the accused is guilty, it must convict. See the case of *Bediako vrs. The State* [1963] 1 GLR 48

In his evidence in chief before this Court, the accused person said he had sold off all the bags of soya bean meal to other customers with the knowledge and consent of PW1. To quote the accused person “ in respect to this particular case I am accused of, prior to the order being made by Mr. Francis Afriyie of Best Grains, he specifically on a phone conversation as has always been the practice between us, asked me to get some buyers who can buy from the order he made. So my lord, on the 14/4/21, I made the first payment of 500 bags amounting to GHc97, 000 at the ABSA bank account number 0811043567, Tanoso branch Kumasi and the second payment was on 16/4/21 the same account, the same branch totaling GH194,000. My lord, after making the payment, the consignment was loaded to the customers.....My lord, I submit to this Honourable court that every consignment loaded was with the consent of Mr. Owusu Afriyie. He knew the business arrangement we had and for me, this is just a business gone wrong between myself and Mr. Francis Owusu Afriyie”.

Accused person had insisted on this under cross examination by prosecution. At page 62 of the record of proceedings, he had answered;

Q: *I put it to you that you sold 500 bags of soya bean at a cost of GHc190 per bag instead of GH195 to one Balaji without the consent of PW1.*

A: *My lord, that is not correct. Every sale that was made, the price was agreed between myself and PW1.*

Q: *I am putting it to you that you sold some quantity of the soya bean to one Nicholas at Kasoa.*

A: *That is so my lord and it was also in agreement with PW1.*

Q: *Further you sold 1,040 bags of soya bean without the consent of PW1*

A: *my lord, that is not correct and I say that because every sale that was done again was in agreement and PW1 was in the known.*

Q: *All those monies that you received from the customers that is Balaji farms, Nicholas, Great Ken and Oyarifa, Lariba and Alice at Kaneshie were all paid into your personal account.*

A: *My lord, that is so and it is because that is the normal practice my lord and because PW1 has no knowledge of the customers, I deal directly with them.*

PW1 was in the witness box and the accused person cross examined him for more than two hours. Nowhere in accused person's cross examination of PW1 did he challenge PW1's claim that he (accused person) had dealt with the 3540 bags without his consent. Accused person did not ask one question of PW1 to put forth a case that the sale was with the consent of PW1 or that PW1 had asked him to find customers to purchase the soya bean meal and he had done so. That he chose to suddenly say this in his evidence in chief and insist on it appears more to be an afterthought than the truth. I thus do not believe the evidence of the accused person.

Again, the accused person wrote down his own investigation and charge caution statement in the presence of an independent witness. According to the accused person in his investigation caution and charge statement, he is a representative of Bill logistics and has been the sole transporter of products purchased by Best Grains. That he transports the products from Tema to Kumasi.

That between March and April, PW1 ordered some quantities of soya bean meal and this time around, asked that he and PW4 transport it to him. They were each to transport a certain quantity.

That PW4 had a client who needed some of the products. That unbeknownst to PW4, he spoke to PW1 to allow him sell to the client and PW1 agreed upon condition that he makes payment to him through his bank account. That in all, PW1 consented to the sale of 1000 bags and he paid the value of the 1000 bags into PW1's account.

Further that he later had customers who wanted some of the products and he proceeded to sell to them without the knowledge of PW1. The customers were introduced to him by PW3 who did not know that he was selling the goods without the knowledge of PW1.

Again that he kept the money to himself after selling the goods to various customers. That he decided to invest the money in petroleum business in Nigeria and so he travelled to Nigeria in May. That he takes full responsibility for what happened and if given time, he could pay the money from the profits of his investment in Nigeria.

Accused person in this court and under cross examination, says he no longer relies on the very statements which he himself wrote down as his investigation caution statement. At page 63 of the record of proceedings, accused person had answered;

Q: *Did you give a statement at the police station?*

A: *Yes my lord, I did.*

Q: *That statement was written by you yourself.*

A: *Yes my lord.*

Q: *That statement has been tendered in this court and marked as exhibit A.*

A: *My lord, the statement I wrote at the police station is not what I am relying on and the evidence I gave in court is what I am relying on.*

Q: *I put it to you that at the time you gave this statement at the police station, this very matter was so fresh in your mind that you cannot deny it. You wrote it yourself without any duress.*

A: *My lord, I wrote these statements myself and as I said my lord, I am not relying on those statements but the one I gave in court.*

The courts treat with suspicion persons who make conflicting statements at different times without offering a reasonable explanation for the variance in their statements. In the case of *Odupong v Republic [1992-93] GBA 1038*, the Court of Appeal, coram Amuah, Brobbey JJA's (as they were then), and Forster JA held on this principle as follows: *"The law was well settled that a person whose evidence on oath was contradictory of a previous statement made by him, whether sworn or unsworn, was not worthy of credit and his evidence would be of no probative value unless he gave a reasonable explanation for the contradiction."* See also the cases of *Gyabaah v Republic [1984-86] 2 GLR 416* and *Kuo-den alias Sobti v Republic [1989-90] 2 GLR 203 SC*

The accused person had not attempted to provide any explanation for the contradiction in his statement. He simply does not wish to rely on same in this court but rather wishes to rely on his evidence in chief. That is not reasonable and so I find that his evidence is of no probative value. Accused person himself is not worthy of credit.

It is trite that a confession statement made by an accused person which is properly obtained constitutes evidence against him. In the case of *Francis Arthur vs. The Republic (Criminal Appeal No. J3/02/2020) delivered by the Supreme Court on 8th December 2021, Amegatcher JSC* in reading the decision of the apex court quoted with approval the dictum of Akamba JSC in the case of *Ekow Russell vs. The Republic [2017-2018] SCGLR 469* which is that:

“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 any fear, intimidation, coercion, promises or favours”.

The confession statement of accused person was appropriately obtained. He wrote it himself and same was admitted into evidence without any objection from him. In this court, he has not alleged any impropriety in the taking of his investigation caution statement. That being so, it presents the strongest evidence against him and is the most reliable piece of evidence upon which to convict the accused person.

At the close of accused person’s defence, I find that his evidence in chief is a mere afterthought and the contradiction between his evidence in chief and his investigation

caution statement paints the accused person as a witness of little credibility if at all. I do not find his explanation to be reasonably probable and the evidence on record does not raise any defence in his favour. Accordingly, he has failed to raise a reasonable doubt in my mind.

From the totality of evidence, the accused person appropriated 3,540 bags of soya bean meal belonging to Best Grains Ltd. He did so dishonestly by underpricing one bag at Ghs 194 instead of Ghs 195 that PW1 had indicated to him for the sale of the initial 1000 bags. By so doing, he managed to dispose of all but 180 of the quantities of soya bean meal between the 16th April, 2021 and 4th May, 2021.

At the close of the trial and after an evaluation of the entire evidence on record, I find that prosecution has established the guilt of accused person beyond a reasonable doubt on count one, two, three, four, five, six, seven and eight. Consequently, he is convicted on the said charges.

On count nine, it appears prosecution threw in the charge just in case the offence of stealing did not succeed. It is the very same bags of soya bean meal that the accused person has been charged with stealing of that he was charged with on fraudulent breach of.

It is trite that an accused person cannot be made to answer twice to an offence and so the charge of fraudulent breach of trust which is in respect of the very same goods cannot be sustained. Accordingly, I hereby acquit and discharge him on count nine.

PRE SENTENCING

According to prosecution, the convict is not known. That save for the 800 bags of cement that were retrieved from one Lariba, none of the remaining bags of soya bean meal or its value thereof have been recovered.

According to Benedict Ewura speaking as a representative of complainant for his victim impact statement, the offence has almost crippled the business of PW1. PW1's creditors are on him and the business is down. That PW1 trusts in the justice system and leaves everything to the Court.

In mitigation, convict said that this is his first offence and he has generally worked well with PW1 for five years without any incidence. Also that he is not too healthy. That he is a family man with two children aged between four and 2 and a half who are dependent on him.

SENTENCING

The offence of stealing falls under the 2nd degree felony offences that carry a ceiling of a maximum term of imprisonment of 25 years.

In order to arrive at a just sentence, I must take into account both aggravating and mitigation factors which operate against and in favour of the convict.

In aggravation, I have considered the fact that convict had shown no remorse for this crime and taken prosecution through a full trial to establish his guilt. He had by so doing, wasted the time and resources of the state as well as the witnesses. PW1 had to travel from the Ashanti Region to court on various dates to testify at his own cost. This is despite the fact that in his own words and writing, he had voluntarily confessed to the offence in his investigation caution statement.

Furthermore, the offence appears to have been pre meditated. In convict's own statement, he had been informed of a profitable business in Nigeria sometime ago but raising capital was an issue so he saw this as an opportunity to raise the necessary capital to go into that business. He had travelled to Nigeria with the sum of Ghs 573,300 which he realized from the stealing of PW1's company's soya bean meal to invest in the said business. He did not appear to consider the effects that this stealing would have on the business of PW1. As PW1's representative said, the business is now on its knees due to this offence.

PW1's company (Best Grains) had lost its benefit, interest and value in the soya bean meal because they had already paid for it. Save for the 800 bags which they have recovered, they have not made any recovery from the convict either for the soya bean meal itself or its value. This is despite the fact that the convict says he went to invest the money in a business in Nigeria and would use some of the profits to pay off the amount involved.

In mitigation, convict is in his thirties and but for this offence, was unknown to the law. He had generally led a responsible life until the commission of this offence and it appears it was based on this that PW2 entrusted him with the responsibility of transporting the goods. He also says that he is a family man with young children whom he is responsible for.

In consideration of all the factors, I hereby sentence convict to a four (4) year term of imprisonment on count one, five (5) year term of imprisonment on count two, seven (7) year term of imprisonment on count three, five (5) year term of imprisonment on count four, five (5) year term of imprisonment on count five, four (4) year term of

imprisonment on count six, five (5) year term of imprisonment on count seven and a six (6) year term of imprisonment on count eight. The terms are to run concurrently. He is also to deliver 2,940 bags of soya bean meal to Best Grains Ltd or pay its current market value to them within 60 days from the date of judgment.

(SGD)

H/H BERTHA ANIAGYEI (MS)

(CIRCUIT COURT JUDGE)

A.S.P. STELLA ODAME FOR THE REPUBLIC.