

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON MONDAY, 31ST JULY, 2023

SUIT NO. D1/14/19

THE REPUBLIC
VRS
JAFARU OSMAN

JUDGMENT

The accused person was arraigned before this Court on the 19th day of May, 2023 on a charge of stealing, contrary to *section 124(1) of the Criminal Offences Act, 1960 (Act 29)*. Per the particulars of offence, on the 26th day of October, 2021 at about 5:00am at Bundase in the Tema Circuit and within the jurisdiction of this Court, he did dishonestly appropriate ten cattle valued at eighty five thousand Ghana cedis (Ghs 85,000), the property of Musah Morde.

Accused person pleaded guilty simpliciter after the charge was read and explained to him in his preferred language of Hausa.

Per the brief facts of the case as presented by the prosecution; the complainant Musah Morde is a farmer and a resident of Atadeka, Ashaiman whilst the accused Jafaru Osman is a herdsman and a resident of Ho. Somewhere in January 2021, the complainant gave 60 of his cattle to the accused to take care of at Bundase. The complainant has been visiting the accused regularly in the bush to check on the animals. On 26th October 2021, in the morning the complainant called the accused person on his cell phone to find out his location with the animals in the bush so that he could visit and check on the animals but

the accused told the complainant not to come because the ground is slippery. The following day, the complainant called the accused to find out his location but the accused told him not to come to the bush because he drove the animals to a different location. On the third day when the complainant called the line of the accused, the mobile phone was switched off. The following day the complainant had information to the effect that since 26th October 2021, the accused has not brought the animals to the kraal. The complainant proceeded to the kraal and saw the kraal empty. The complainant was able to retrieve 50 of the cattle and effort made to trace the remaining 10 cattle proved futile. On 14th May 2023, Police intelligence led to the arrest of the accused at this hide out Kpong. In his investigation caution statement, the accused admitted having stolen four out of ten cattle and sold same to an unknown person at the cost of Ghs 3,000.00. After investigation, the accused was charged as per the charge sheet and arraigned before this Court.

In order to ensure that the accused person was compos mentis, that his plea of guilt was voluntary and further that he understood what it means to plead guilty, I asked him the following questions:

BY Court: Accused person, how are you doing today?

A/p: My lord, I am very okay

BY COURT: How old are you sir

A/p: I am 37 years old.

BY COURT: Do you understand the court proceedings so far?

A/p: Yes I am in court and I understand the proceedings so far my lord

BY COURT: Without prejudice, have you ever administered any narcotics to yourself?

A/p: No my lord. I do not do that.

BY COURT: Have you ever suffered from any mental derangement?

A/p: There was a time I had some brain problems but it is not anything serious.

BY COURT: How long ago was that?

A/p: 9 years ago my lord

BY COURT: Do you understand what it means to plead guilty?

A/p: Yes, my lord. The truth is only one. I stole them with others.

BY COURT: Your plea of guilt did you make it voluntarily?

A/p: Yes. It is the truth

BY COURT: Has anyone including the police, prosecutors, investigators, complainant or anyone for that matter induced you either by threat of duress or duress itself to plead guilty to this charge.

A/p: No my lord

BY COURT: Has anyone including I, myself the court staff, the police, any lawyer or any person for that matter demanded for and or obtained any property from you for the purpose of handing same to me for you to receive a lighter sentence for your plea of guilt.

A/p: No my Lord

BY COURT: Do you agree with the facts by prosecution as read and explained to you?

A/p: Yes, my lord.

Being satisfied based on the answers of the accused person to the questions that he was compos mentis, that he understood the plea of guilty and his plea was voluntary, I proceeded to convict him on his own plea.

PRE SENTENCING HEARING

BY COURT: Is he known?

Prosecution: He is not known my Lord

By court: Has any of the cattle been recovered?

Prosecution: My Lord, only the initial 50 that were recovered.

BY COURT: The complainant, would you like to give a victim impact statement?

A: *Yes my lord. My name is Musah Anorde*

BY COURT: *How has this affected you if at all?*

Complainant: *Some of the cows belong to other people and that is the difficulty that the issue has brought to me. I wanted him to show me where the other cattle are so that we can retrieve same. Accused person worked for 9 months.*

BYCOURT: *Convict, can you direct the state to where to find the cattle?*

Convict: *My Lord, I sold only 4 and I sold them to a butcher. He has killed all of them. I stole it with 2 others – one is called Ali and I can show the police his house even right now. The other person, I do not know his name.*

Prosecution: *My Lord, the whereabouts of Ali is known to the state and we already have an investigation caution statement from him.*

BY COURT: *Very well. Convict any grounds of mitigation that you would like the court to take into account?*

Convict: *My Lord, I am just begging. That is all.*

BY COURT: *Do you have a wife and children?*

Convict: *Yes, my lord, one wife, and five children*

BY COURT: *Do they live with you?*

Convict: *No my lord. They live on their own and so do I.*

BY COURT: *Who caters for them?*

Convict: *I cater for them. However, since my arrest, I have not been able to provide for them. I give them GH200 per month.*

BY COURT: *Prosecution, how long was the convict in custody?*

Prosecution: *My Lord, he was arrested on the 16th May 2023 and arraigned before court today.*

I sentenced the convict to an eighteen (18) month term of imprisonment. He was also to enter into a self recognizance bond to keep the peace and be of good behavior for a

period of six months after his release from custody. In default, he would serve a one month term of imprisonment. The convict was also ordered to pay the full value of the cattle to the complainant by the 30th of June, 2023. I reserved the reasons for the sentence to be lodged at the Registry of the Court. I hereby proceed to deliver the reasons.

SENTENCING

The offence of stealing is a second degree felony which carries with it a maximum term of imprisonment of twenty five years upon conviction. In arriving at an appropriate sentence to hand down to a convict, the court must take into account both mitigation and aggravating factors.

Kpegah J. (as he then was) in the case of *Impraim v. The Republic [1991] 2 GLR 39-47* stated that in considering the sentence to be given to an accused either upon first trial or during appeal, the courts had to take into consideration ‘the gravity of the offence taking into account all the circumstances of the offence. In this wise, regard must be had to such matters as the age of the offender, his health, his circumstances in life, the prevalence of the offence, the manner or mode of commission of the offence — whether deliberately planned and executed — and other like matters.’

In sentencing the convict, I take into account the fact that he is a first time offender and he is unknown to the law but for this. Although at 37 years he cannot be classified as a young person, he has up to this age, led a crime free life. I am thus minded in the circumstances to hand down a lenient sentence.

Also, he pleaded guilty at the earliest possible stage and that must go to his benefit. By doing so, he saved the state from wasting its minimal time and resources in going through a full trial that would waste rather scanty and/or scarce state resources.

Again, a high number of the cattle have been found and are currently in the possession of the complainant. Out of a total number of sixty (60) cattle, fifty (50) have been recovered. It is ten that were not found and according to the convict, he stole four and has sold them to a butcher who has since killed them.

In aggravation is the fact that the convict breached the trust that the complainant placed in him by stealing and selling the very cattle that he was employed to take care of. As a herdsman, his duty was to take care of the animals and protect them from such thefts. He had rather turned around and stolen same.

The value of the stolen cows is also high. In all, the complainant would need eighty five thousand Ghana cedis (Ghs 85,000) to replace the ten cattle, four of which according to the convict have been killed by the butcher he sold them to.

Furthermore, stealing of cattle by the very persons who are engaged to take care of them and be their shepherds is on the ascendancy within this jurisdiction and there is a need to hand down sentences that would deter others and also ensure that victims of such offences would have some sense of restitution.

Stealing of cattle by the herders appears to slowly be on its way to being accepted as an adventure that a herdsman can embark on without consequences within this jurisdiction. The courts must be seen to hand down deterrent sentences that would prevent this aberration from becoming an established norm within the jurisdiction.

I have also taken into account the time spent by the convict in custody. Upon these basis, and in careful consideration of all the mitigation and aggravating factors, the convict is hereby sentenced to an eighteen month term of imprisonment.

He is also ordered to enter into a self-recognizance bond to keep the peace and be of good behavior for a period of six months after his release from custody. In default he would serve one (1) month term of imprisonment. He is further ordered to pay the full value of the cattle to the complainant by the 30th day of June, 2023.

(SGD)

H/H BERTHA ANIAGYEI (MS)

(CIRCUIT COURT JUDGE)

INSPECTOR JACOB KUUBAL FOR THE REPUBLIC