

IN THE CIRCUIT COURT OF GHANA HELD AT CAPE COAST ON THURSDAY
THE 26TH DAY OF OCTOBER 2023 BEFORE HER HONOUR MRS VERONIQUE
PRABA TETTEH.

SUIT No. 82/2023

THE REPUBLIC

VS

FRANCIS ESHUN

KOJO FRANCIS

KWESI KAYA

ATIA KAKRA

The case of the prosecution is that on the 31st of October 2022, one Vincent Nyaku went to the Vuluxx company (hereinafter referred to as the complainant) site and detected that the padlock to a structure that contained materials had been broken. When he entered, he quickly realized that thieves had broken into the structure. An audit was soon conducted which revealed that 128 bags of ammonia valued at GH¢36850 could not be accounted for. Management quickly invited both the night and day security officers for questioning but they denied any knowledge of the theft or any involvement in the theft of the items. The four accused persons, who were the security officers on duty were then arrested and with conspiring to steal the company's property; stealing 128 bags of ammonia and causing damage to a padlock valued at GH¢100.

The case was reported at the Elmina District Police Headquarters police station where the accused persons were arrested. During their interrogation by police, none of the accused persons could tell when the offence occurred; even though they claimed they had been at their duty posts. Police investigations also revealed that the

structure, in which the ammonia was kept, was at the entrance to the quarry site, in close proximity to the security post and well illuminated by street lights. The structure was also within the supervision area of the accused persons. After the investigation, the accused persons were charged with the offences.

The prosecution relied on the evidence of three witnesses to make its case. The first two witnesses were employees of the company and occupied the positions of transport manager and supervisor respectively. The final witness was the investigator. The evidence of the witnesses was in summation, the facts that have been narrated above. I will repeat the salient parts though. On the 31st of October 2022, the first prosecution witness, discovered on his arrival at the site that the structure which contained materials belonging to the company had been broken into. He called the security as well as the general manager to inform them. When the inventory of stock was conducted, it was discovered that 128 bags of Ammonia were missing. The accused persons who were security officers claimed they did not see or hear of the theft and only got knowledge of it when they were informed by the company. Finding their story unbelievable, they were charged with the theft of the missing bags of ammonia. The investigator also testified but the crux of prosecution's case was provided by the first two witnesses. His evidence was only to tender the statements of the accused persons as well as pictures of the container structure and the its interior.

At the close of prosecution's case, counsel for the accused persons made a submission of no case requiring the court to examine the totality of evidence offered by prosecution to make its case. Section 173 of the Criminal and Other Offences Act, 1960, Act 30 provides that

173. Where 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 the

accused to make a defence, the Court shall, as to that particular charge, acquit the accused.

From the above section, the evidence required from prosecution at the close of their case should have established the following as per the essential ingredients of the various offences; failing which the accused persons should be acquitted of the offences. To prove that the accused persons conspired to steal, prosecution should have led evidence to show:

- a. That the accused persons either agreed together or
- b. Acted with a common purpose for stealing

For stealing, the case of *Ampah v Republic* [1977] 2 GLR 171 provides that the essential element that needed to be proved as:

- a. That the accused person appropriated the 128 bags of Ammonia
- b. That accused persons acted dishonestly
- c. That the bags of ammonia did not belong to accused persons

Finally, for causing unlawful damage, prosecution had to establish that;

- a. The accused persons intentionally damaged the padlock
- b. That the destruction of the padlock was unlawful

These ingredients must all be established against each accused persons personally and to the degree required for the court to find that a sufficient case has been made. Where prosecution was unable to prove even one element of any particular offence, the law requires that the accused persons be acquitted. See the cases of

Logan v The Republic 2007-2008 1 SCGLR 76

Apaloo v The Republic 1975 1 GLR 156

State v Ali Kassena [1962] 1 GLR 44

Counsel for the accused persons, in his submission to this court filed on the 11th of October 2023 reproduced portions of the cross examination of the second prosecution witnesses. He sought to emphasize the lack of evidence by the prosecution. I will reproduce those portions below as follows:

Q: I again put it to you that accused persons were arrested simply because they are security officers at the quarry site

A: Yes

He was further asked

Q: I am putting it to you that accused persons did not damage the company's padlock on the container.

A: I cannot tell

Q: I again put it to you that accused persons did not steal 128 bags of ammonia or any ammonia

A: I cannot tell

Finally, the part which seals the case made by the counsel for accused persons is this interaction.

Q: tell the court why it was the accused persons you suspected were involved in the case of the missing ammonia bags of all the workers

A: it was because they were the security guards at the quarry

Q: I again put it to you that accused persons did not damage the padlocks on the container

A: I did not say they damaged the padlocks

The above responses mirror the answers of the first witnesses when asked such questions and it shows that the accused persons were arrested simply because they

were the security guards on duty when the thefts occurred and also because they could not explain how the stealing occurred while they were on duty.

The evidence led does not place any of the accused persons either outside the container or inside the container at the time of the offence. If truly one 128 bags of ammonia were stolen and the bags are what were exhibited in the picture, then it shows that it would have had to be carried out one by one or carried away in a vehicle. There is no evidence showing how the accused persons carried the ammonia away. None of the ammonia has been recovered from either of the accused persons or persons close to them. No forensic evidence either finger prints of the accused persons on the outside and inside of the container or video footage of accused persons carrying out the acts were presented.

In this day and age, where forensic science has greatly advanced to aid in police investigations, it is a shame that the prosecution presented this case without a shred of evidence and seeking to only rely on suspicion to make their case. The probability that the accused persons may have been incompetent in their role as security officers does not establish that they unlawfully destroyed the padlock, dishonestly appropriated the 128 bags of ammonia and that they had agreed among themselves to act this way.

Having carefully considered the evidence so far led by prosecution in the light of the tests stated above, I find that prosecution has failed to lead credible evidence establishing the essential ingredients of the crime of stealing, causing unlawful damage and conspiracy to steal. I am not satisfied that a sufficient case has been made against the accused persons for them to answer. I will therefore acquit and discharge them.