

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON TUESDAY, 14TH MARCH, 2023

SUIT NO. D7/27/23

THE REPUBLIC

VRS

KWAKU AMANFO ASANTE & ANOTHER

JUDGMENT

The first accused person was arraigned before this court on the 20th day of February, 2023. He was charged with three counts; stealing contrary to *section 124(1) of the Criminal Offences Act, 1960 (Act 29)*, unlawful entry contrary to the very same Act 29 and causing unlawful damage contrary to *Act 29*.

The particulars of offence for count one are that during the month of October, 2022 at Tema harbor, Tema new town in the Tema metropolis and within the jurisdiction of this court, he dishonestly appropriated 3.2 km aluminum cladding pipeline valued seventy thousand Ghana cedis (Ghs 70,000.00) the property of Goil Bitumen Company.

For count two, the particulars of offence are that during the month of October, 2022 at Tema fishing harbor, Tema New Town in the Tema metropolis and within the jurisdiction of this court, he unlawfully entered the terminal yard of Goil Bitumen company at the fishing harbor with intent to commit crime namely; stealing.

Then on count three, the particulars of offence are that during the month of October, 2022 at Tema fishing harbor, Tema New Town in the Tema metropolis and within the

jurisdiction of this court, he intentionally and unlawfully caused damage to a 3.2 km aluminum cladding pipeline valued seventy thousand Ghana cedis (GHS 70,000.00) the property of Goil Bitumen Limited.

According to prosecution, the brief facts are that the complainant, Allan Aboagye is the security officer at the Goil Bitumen Company Limited located at heavy industrial area, Tema, whilst accused Kwaku Amanfo Asante age 32 is a laborer at the fishing harbor, Tema. During the month of October, 2022, the company detected theft of aluminum cladding covering a 3.2 km Bitumen pipeline from the main harbor to the company's yard at Heavy Industrial area Tema have been stolen.

The company placed security guards at the various points to get the perpetrators arrested. On 6th February 2023, the accused person was spotted at the premises of Goil Bitumen Company at the main harbor stealing the aluminum claddings on the pipeline. Accused was giving a hot chase but jumped into the sea and swam away. On 13 February 2023, at about 1:30pm, accused person was again spotted at the main harbor at the complainant's company yard and he was arrested together with some of the exhibit.

He was immediately brought to the police station. During interrogation, at the police station, accused person admitted having unlawfully entered the premises of the company, caused damage to the bitumen pipelines and stole the aluminum claddings. Accused person further stated that he went and sold the exhibits to a scrap dealer at a fee of three hundred and eighty Ghana cedis (Ghs 380.00). Accused person also led police to the scrap dealer at water land, a suburb of Tema Newtown and pointed out the dishonest receiver to police he was arrested.

The scrap yard was searched but the exhibits could not be found. After investigations, both accused persons were later cautioned and charged with the various offenses and arraigned before this honorable court.

The accused person elected to speak twi and the charges were read and explained to him. Prior to taking his plea, his constitutional right to engage the services of counsel, to seek the assistance of legal aid or to conduct the matter prose were explained to him and he was put to election. He elected to conduct the matter prose.

He pleaded guilty simpliciter on all three counts. In order to ensure that his plea of guilt was voluntary and that he understood the plea, I proceeded to ask him these questions.

BY COURT: A1, how are you doing today?

A1: I am doing well this morning please.

BY COURT: How old are you?

A1: 32

BY COURT: What is your level of education, if at all?

A1: I am not educated at all.

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

A1: No, My Lord, but I know that I am in court.

BY COURT: Without prejudice, have you ever suffered from any mental derangement?

A1: No. However, I sometimes speak to myself in my head.

BY COURT: Do you administer any narcotic drug to yourself or have you done so in the immediate past?

A1: Yes, I take wee.

BY COURT: When was the last time that you took in some wee?

A1: About a week ago.

BY COURT: *You have pleaded guilty simpliciter to count 1, count 2, count 3. Do you understand what it means to plead guilty?*

A1: *Yes, please, I do understand.*

BY COURT: *In your own words, what does it mean to plead guilty?*

A1: *I understand that I did all that they have said. I plead with the court that I would not do so again. I apologize to the court.*

BY COURT: *Is your plea of guilt voluntary?*

A1: *Yes, My Lord.*

BY COURT: *Have the police, the prosecutors, the complainant, your family, the court itself or anyone for that matter induced you to plead guilty either by threat of duress or duress itself or the promise of a reward?*

A1: *No please, it is voluntary.*

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

A1: *No, please. I do not know anyone in that name.*

BY COURT: *Dou you finally agree to the facts as read and explained to you by the state.*

A1: *Yes, My Lord*

Being convinced that the accused person understood the charge, was compos mentis and had pleaded guilty voluntarily, I proceeded to convict him on his own plea.

PRE SENTENCING

According to prosecution, the convict is not known. None of the items have been recovered.

In its victim impact statement, the representative of complainant company has this to say “My Lord, it has affected the company in so many ways, because the bitumen passes through the pipeline and same must be covered with a fiber and aluminum plate. As the aluminum plate was removed, it made the heat that passes through the bitumen to become exposed and that makes it difficult to fix the bitumen to pass through. That is the main one. Again, the cost included in replacing the aluminum has also affected the company.

In mitigation, convict had this to say to the Court: “I plead with the court, to have mercy on me. I am an orphan who has lost my mother and father and wherever I am taken to, I have nobody to assist me.

BY COURT: At 32, do you work?

A1: No, My Lord.

BY COURT: Do you have a nuclear family?

A1: I have two children. One boy and one girl.

BY COURT: Where are the children?

A1: They are at Sefwi with my sister.

BY COURT: Do you maintain them?

A1: Yes, whenever I have money, I am able to give them some.

SENTENCING

I sentenced the convict on count one to a four (4) year term of imprisonment. On count two and count three, he was sentenced to a three (3) term of imprisonment each. He was also ordered to enter into a self-recognizance bond to keep the peace and be of good behavior for a period of 12 months after his release from custody. In default he would serve six (6) months terms of imprisonment. I reserved my reasons to today.

The offence of stealing is a second degree felony which carries with it a minimum term of imprisonment of twenty five (25) years. The offence of unlawful entry and causing unlawful damage are also second degree felonies which carry for each a minimum sentence of ten (10) years imprisonment.

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, none of the items have been recovered and the cost of seventy thousand Ghana cedis (Ghs 70,000), being the cost of the items is on the high side, I side with the reformatory element of the criminal justice system that provides that unless mandated by law, a court should deal leniently with a first time offender particularly so if he is in his youthful years.

According to *Taylor J* (as he then was) in the case of *Haruna v. The Republic [1980] GLR 189-192* "when young men (such as the appellant) have had their first brush with the law, it was essential in the interest of the reformatory element in criminal justice that they be not sent to prison unless a prison sentence was a mandatory legal requirement. If a prison sentence was not mandatory, then as a general proposition, unless there were special circumstances calling for a custodial sentence, the courts must avoid incarcerating young offenders".

Convict is 32 years and falls within the category of a young man who has had his first brush with the law. Convict also pleaded guilty at the earliest possible stage i.e the first date of arraignment. By doing so, he saved the state the time and resources from going through a full trial and wasting rather scarce state resources.

However, the offence of stealing and unlawful entry are particularly on the ascendancy among the youth 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 appears to slowly be on its way to being accepted as a mainstay of one's youthful years within this jurisdiction. The courts must be seen to hand down deterrent sentences that would prevent this from becoming an established norm within the jurisdiction.

It is based on these considerations that I sentenced the convict on count one to a four (4) year term of imprisonment. On count two and count three, he was sentenced to a three (3) term of imprisonment each. He was also ordered to enter into a self-recognizance bond to keep the peace and be of good behavior for a period of twelve (12) months after his release from custody. In default he would serve six (6) months terms of imprisonment.

H/H BERTHA ANIAGYEI (MS)
(CIRCUIT COURT JUDGE)

INSPECTOR JACOB KUUBAL FOR THE REPUBLIC PRESENT