BEFORE HER HONOUR NANA ADWOA SERWAA DUA-ADONTENG, JUDGE SITTING AT AKROPONG CIRCUIT COURT ON 14TH SEPTEMBER, 2023.

COURT CASE NO: D4/01/2024

THE REPUBLIC

VERSUS

KWABENA TUFFOUR

FINAL JUDGMENT

Prosecution Represented by: Inspector Alexander Agbekpornu.

Accused Person is represented by Samuel Osei Adjabeng, Esq (appointed by the court)

CHARGE

STEALING contrary to section 124(1) of the Criminal Offences Act, 1960 (29)

PARTICULARS OF OFFENCE

That Accused Person on 27th July,2023 at Akropong in the Ashanti Magisterial and within the jurisdiction of this court, dishonestly appropriated an Infinix Hot 8 mobile phone valued GHs800 the property of one Emmanuel Oteng.

PLEA

The court explained the respective pleas of Guity and Not Guity and the consequence of each plea. The Accused person pleaded **Guilty with Explanation** to the charge.

FACTS as presented by the prosecution

The complainant in this case is one Emmanuel Oteng, a driver's mate residing at Kwadaso. The accused person Kwabena Tuffour also driver's mate also resides at Akropong. On 27/07/23 about

2:00pm he came to Akropong with his vehicle full of passengers, he loaded a different set of passengers from Akropong to Kejetia which the accused person was part of this passengers. Upon reaching Atwima Koforidua the accused alighted. The complainant then detected that his Infinix Hot 8 phone valued GHs800.00 had gone missing. Complainant suspected the accused but since he has(sic) no evidence, he lodged a complaint (sic) the police on his missing phone. Case revealed that a lady with a different telephone number contacted the accused which was a trap set up by complainant and got to know the hideout of the accused. Complainant led the police to Tanoso the hideout of the accused, police arrested the accused person to the Akropong police station for investigations. In accused persons caution statement, he admitted the offence stating that he stole the phone. After investigations, accused was charged with the offence as stated on the charge sheet and brought before this honorable court for trial.

Explanation of Accused Person to the charge

I did not intend to steal the phone. It had gone off so I took it home to charge it and turned it on. When I turned it on, he called me and informed me the police are on their way to arrest me. I plead with the court that I will not repeat such an offence.

Following the explanation of the Accused person, the court found that he had not put up any defence to the charge and admitted the charge of stealing the phone. The court proceeded to find the Accused person Guilty of the offence of stealing the mobile phone pursuant to his own plea and Convicted him thereof.

Following his Conviction as part of the pre-sentence hearing, Counsel for the Accused allocuted that the Accused person aged 18 was a young offender and justice should be meted out to him in accordance with the Juvenile Justice Act, 2003 (Act 653). Prosecution opposed, arguing that they had come to understand that Accused was not 18years as he had informed the police upon his arrest but was much older. Under Act 653, a young offender at section 60 is a young person who has been convicted of an offence for which the court has power to impose a sentence of imprisonment for one month or upwards with the option of a fine. A young person is also defined under the same section of the Act as a person who is 18 years or above but under 21years. **Baba Usman vs the Republic [2023] DLCA16192 Criminal Appeal No: H2/21/2023 dated 2023/07/27**

The court inquired from the Accused person if he could produce his Ghana card as proof of age to which he responded that he did not have one but rather had a Voter's ID card with which he voted in the last election. Considering that the last election was conducted in 2020, if the Accused was then even aged 18years, to validate him to register to vote, then indeed he could not still be 18years at the time he stood before the court. The court also noted that despite the fact that Accused person indeed by a physical observation appeared relatively older than 18years, it was appropriate in such a case to have a proper assessment of the age than proceed on conjecture and ordered the prosecution to submit him for a proper age assessment to be conducted.

On 28th August, 2023, a medical report from Atwima Nwabiagya North-Akropong Poly Clinic was submitted by prosecution evidencing that Accused was a patient of the facility and his age on record was 24years.

It is important here to comment that the issue of the age of Accused was raised by Counsel after he was convicted by the court. He was therefore at the time of his conviction known to the court as a young person. It is upon his conviction that he became a young offender. The question therefore belies whether the age of the accused at the time he was convicted can be overridden by a medical report which is provided to the court prior to his sentence but after his conviction. In **Abu Mohammed v the Republic Criminal Appeal No. H2/16/17 dated 19th April, 2018**, the Court of Appeal had this to say:

"…When a person is eighteen years or above or below twenty-one years and commits a crime, he is to be tried in the regular courts and not the Juvenile Justice Court. Again Act 653 defines "serious offence" to include offences such as robbery, rape, defilement and murder. Therefore, if a person who is twenty-one years old commits an offence of robbery, is tried in the regular courts, then the sentence (sic) of such an offence cannot be three years as is being suggested by counsel for the appellant. The reason being that, the minimum sentence for the offence of robbery is fifteen years. Counsel for the Appellant is equating a Juvenile Offender with a young offender which is wrong. A person has to be convicted first when he is above eighteen years, before the issue of he/she being a young offender would arise…"

It is my understanding from the Abu Mohammed case (supra) that the court shall deal with the Accused as he was at the time he was convicted. It is therefore imperative that the proper age of

the Accused person be ascertained before Accused person is brought to court and more importantly before he is convicted.

Again, on appeal before the Supreme Court, in the case of **Abu Mohammed v the Republic Criminal Appeal No. J3/03/2023 dated 17th April, 2024**, the apex Court was called upon to determine whether a person above 18years but below 21years could be sentenced to a term of more than 3years in the face of section 46(1) of Act 653 and it found as thus

"In the instant appeal, though the Appellant was a young person at the time he committed the offence, the offence he was convicted of, that is robbery attracted a sentence of not less than 15years because he used a weapon to commit the offence. The offence for which the Appellant was convicted of, does not attract the imposition of a fine. The Appellant does not therefore qualify to be considered as a young offender and we so hold."

The test of determining who a Young Offender is therefore two-pronged

1. The person must be between18-21years at the time he is **Convicted (emphasis mine)**
2. The punishment for the offence should not carry the imposition of a fine.

I humbly believe that it is the age of Accused at the time of his conviction that matters in sentencing and not his age during the trial, therefore assuming Accused person is convicted at the age of 18years, although improbable, it is irrelevant that he is at the time of being sentenced aged 22years, which falls outside the category of young offender. Unless of course, there is express and unequivocal evidence available to the court that the Accused person went to extra extensive lengths to conceal his true age to in order to appear younger and therefore be treated either as a juvenile or young offender, I see no justification for the court to upend the age of the Accused at the time of his conviction with a greater age for his sentencing.

In light of the above analysis, I find that the Accused was on record Convicted at the age of 18years and shall be considered as such.

Again, the question for determination is whether he being 18years automatically qualifies him to be treated as a young offender and he therefore cannot be sentenced to more than three years in

custody since he is convicted of the offence of stealing which is not considered a serious offence under the section 60 of Act 653.

I will refer the section 124 of the Criminal Offences Act, 1960 (Act 29) as to the proper punishment for stealing. It provides that

124 (1) Whoever steals shall be guilty of a second degree felony. The section does not provide a minimum or maximum punishment as other offences do.

Hence, I shall travel to the Criminal Procedure Act, 1960 (Act 30), section 296 as to what constitutes a second degree felony.

Section 296(2) provides that where a crime, not being a crime mentioned in sub-section (5), is declared by any enactment to be a second degree felony and the punishment for the crime is not specified, a person convicted thereof shall be liable to imprisonment for a term not exceeding ten years. The section does not give the option of payment of a fine in addition to or in lieu of the imprisonment.

Subsection 5 also provides

"that a person convicted of a crime under any of the following sections of the Criminal Act, 1960 (Act 29) sections 124, 128, 131, 138,140,145,152,154,158,160,165,239,252,253 and 260 shall be liable to imprisonment for a term not exceeding twenty-five years."

However, section 297 dealing with the Rules relating to Fines provides under subsection 1

"that where a person is convicted of any felony or misdemeanor or any offence punishment by the imprisonment (other than an offence for which the sentence is fixed by law) the court may in its discretion, sentence the person to pay a fine in addition to or in lieu of any other punishments to which he is liable."

The court finds that given that even though section 124 which created the offence of stealing did not provide for the imposition of a fine nor section 296 which provides the punishment for the offence, section 297 cures that vaccum and makes it explicit that at the discretion of the court, upon conviction for stealing, the court could sentence the accused to also pay a fine in addition to being sentence to prison.

Therefore on the understanding of the cases of **Baba Usman v the Republic *(supra)***, **Abu Mohammed v the Republic *(supra)*** and the interpretation of sections 46 and 60 of Act 653 by both the Court of Appeal and Supreme Court, I find myself bound to conclude that the Accused person because he is a young offender convicted of a crime whose punishment could exceed one month with the option of a fine, the maximum punishment to be meted out to him pursuant to Act 653 particularly section 46 is twenty-four month at a Senior Correctional Centre.

During the pre-sentencing hearing, Prosecution prayed that the Accused Person is seriously unwell suffering from tuberculosis as evidenced by the medical report that was submitted to buttress the age argument, and also that the complainant had shown no interest in assisting the prosecution to prosecute the matter and therefore prosecution prayed the court to strike out the case. The court held that, it, having previously convicted the accused person, the prosecution was divested of the power to make the prayer of discontinuance at that stage regardless of the reason behind the prayer.

The court found that there was indeed a medical report from Akropong Polyclinic showing Accused Person suffered from Tuberculosis. The court found that the Accused Person is unmarried and does not have a criminal history.

SENTENCE

In **Frimpong alias Iboman v The Republic [2012] 1 SCGLR 297, headnote (8)**, the Supreme Court affirmed the principles for imposing sentences upon a convicted person, namely in determining the length of sentence, the factors which should be considered by the trial judge were:-

"(1) the intrinsic seriousness of the offence; (2) the degree of revulsion felt by law-abiding citizens of the society for the particular crime; (3) the premeditation with which the criminal plan was executed; (4) the prevalence of the crime within the particular locality where the offence took place, or in the country generally; (5) the sudden increase in the incidence of the particular crime; and (6) mitigating or aggravating circumstances such as extreme youth, good character and the violent manner in which the court found an

offence to be grave, it must not only impose a punitive sentence, the good record of the accused would be irrelevant.

Moreover, the Supreme Court has delivered itself on the principles to be considered in sentencing first offenders in the same **Frimpong alias Iboman v The Republic** (supra) Holding (7) as follows:-

"It was generally accepted that, a first offender must normally be given a second opportunity to reform and play his or her role in society as a useful and law-abiding citizen. It was therefore desirable for a first offender to be treated differently when a court had to consider the sentence to be imposed on a first offender vis-à-vis a second or a habitual offender. However, notwithstanding the general principle that first offenders should be treated leniently when sentence was being imposed, the measuring rod or standard in any circumstance was the punishment provided therein. Where, as in the instant case, the minimum sentence had been imposed under section 149 of the Criminal and other Offences Act, 1960 (Act 29) as amended by the 2003 (Act 646), then the hands of the courts were tied. Secondly, the court should also consider whether the first offender had indeed, acted as a first offender; that could be deduced from the type of crime committed, the circumstances under which the crime had been committed and the casualties, if any".

On the totality of all the above, despite having pleaded Guilty to the offence of stealing a mobile phone, accused person is cautioned and discharged.

H/H. NANA ADWOA SERWAA DUA-ADONTENG

(CIRCUIT-COURT JUDGE)