

**IN THE CIRCUIT COURT HELD AT KINTAMPO, ON 9TH APRIL, 2024 BEFORE
HER HONOUR LILY AMOAH - KANKAM, CIRCUIT COURT JUDGE**

CASE No: 20/2024

THE REPUBLIC

VS

KOFI BAWA

TIME: 9: 00AM

ACCUSED

PRESENT

COMPLAINANT

PRESENT

CHIEF INSPECTOR JOHN MENSAH FOR THE REPUBLIC PRESENT

THE ACCUSED PERSON IS NOT REPRESENTED

JUDGMENT

The Accused person was arraigned before this court on the 14th of November, 2023, on a charge of stealing contrary to section 124(1) of the Criminal Offences Act 1960, (Act 29). The Accused pleaded 'not guilty' to the charge against him.

The facts in support of the charge are that, the Complainant is a farmer and resident at Kintampo, he is also a cattle owner with his Kraal located near Asantekwa under the care of his herdsman. Accused is also a farmer and resident at Tandini near Asantekwa. According to prosecution, on 02/10/2023, early in the morning, the complainant received a call from his herdsman that three of the cattle were stolen from the Kraal during the night. Complainant, on receipt of the information, rushed to the Kraal at about 7:00 am and noticed that, indeed, three cows specifically Gudalis were missing from the Kraal. So he followed the trail Accused took with the animals and it led to a spot in between the road leading Asantekwa to 'Tandini, where the animals were

loaded into a tricycle @ Motorking. Prosecution said Complainant reported the matter to the Police and in the course of investigations, a witness in this case disclosed to the Police that at about 2.00 am of same day whilst sleeping, Accused came and woke him up and pleaded with him that he and a Fulani man were transporting cows to Buipe and that the tricycle they were transporting the animals in developed a mechanical fault at Babidor junction in between Asantekwa and Tandini but the witness refused citing the time as an odd time to transport the animals. Prosecution added that the Accused was arrested and, in his investigation, cautioned statement to the Police, he admitted the offence and mentioned one Abukari as his accomplice but he could not lead Police to arrest him. He again told Police that he sent the cow to Buipe market and sold same. After investigation, he was charged with the offence and brought before this honourable court.

It is trite that in criminal prosecutions it is the prosecution that has the legal burden to prove the guilt of the Accused person and the standard of proof required is “**proof beyond reasonable doubt**”. The Accused person has no burden to prove his innocence except in some limited situations where the burden of proof shifts to the Accused person to prove his innocence. The prosecution is therefore required to produce sufficient evidence from which the guilt of an Accused person can be inferred by a reasonable mind. Thus **section 11(2) of the Evidence Act, 1975 (NRCD 323) states that:**

“In a criminal action the burden of producing evidence when it is on the prosecution as to any fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind will find the existence of the facts beyond reasonable doubt.”

In an effort to discharge this onerous burden, the prosecution led evidence through three witnesses. PW1 Akwasi Iddrisu, PW2 Dorwana Kwadwo Mathias and General Corporal AB Mawutor the Investigator in the case.

PW1 testified that on the day in question, he had information from his herdsman, Musah, that three of his cattle were stolen from the Kraal during the night, so he rushed to the Kraal and truly, three of the cattle specifically Gudalis had been stolen. PW1 added that he followed the trail the thieves / thief took with the animals and it led him to a section of the road leading Asantekwaa to Tandini. He also stated that at that spot, he realized the animals were loaded into a motor tricycle because there were tire marks of tricycle all over. He also stated that, in the course of his search, Kwadwo Mathias told him to contact Accused over his missing cows, and that around 2:00 am of 02/10/2023, Accused came to his house and woke him up and pleaded with him to use his motor tricycle @ Motorking to transport some cows at Babidor junction to Kintampo for him, but he refused. PW1 also said that Kwadwo Mathias that is PW2 told him that the Accused also came to him and pleaded with him not to tell anyone he came to him to transport the cows because they are "connection ones" he suspected him so he recorded their conversation.

PW2, Kwadwo Mathias also told the court that, he remembers at about 2:00 am on Monday 02/10/2023, Accused person came and woke him up and pleaded with him to use his motorking to transport some cows to Kintampo and that there was a waiting vehicle to transport same to Buipe. He said the Accused told him again he was transporting the cows together with a certain Fulani man whose name he did not mention, and that the tricycle with which they were transporting the cows developed mechanical fault so the animals were at Babidor junction between Asantekwaa and Tandini. According to him he refused and went back to sleep.

He also said that the Accused person came to him on Tuesday 03/10/2023, at about 4:00 pm and told him that the cattle he wanted him to transport the previous day were stolen ones, and pleaded with him not to tell anyone that he came to him to transport cows to Kintampo. PW2 added that he suspected the Accused when he woke him up that night so when he came back on 03/10/2023, he recorded their conversation.

PW3 also said that a complaint was made against the Accused on 02/10/2023 and it was referred to him for investigation, so he obtained statement from the complainant and that of the witness. He said he extended investigation to the scene and found that the cows stolen were Gudali breeds.

According to PW3, the Accused was arrested on 03/10/2023, at about 9:00 pm in his house at Tandini near Asantekwaa in the course of investigation. PW3 said the Accused was cautioned to that effect and in his investigation cautioned statement he admitted the offence and mentioned one Abukari as his accomplice but refused to lead Police to arrest the said Abukari, he also stated that he sold one of the cows at Buipe fuel depot for GHIC 4,000.00, he again refused to lead Police to trace the buyer to assist the investigation.

PW3 said that he was charged with the offence and brought before this Honourable court. PW3 tendered three exhibits. Exhibit 'A', which is the Investigation Caution Statement, Exhibits 'B', Charge Caution Statement of the Accused person and exhibit 'C', audio conversation between the Accused and PW2, the prosecution closed its case thereafter.

Section 124 under which the Accused person is charged enacts that:

“A person who steals commits a second degree felony”

The Act further provides for the definition of stealing in section 125 as:

“A person steals who dishonestly appropriates a thing of which that person is not the owner”

On a charge of stealing therefore the prosecution has to prove beyond reasonable doubt, three main elements as was stated in **Brobbery and Others v The Republic [1982-83]** GLR 608 namely that:

- **The person charged must have appropriated the thing allegedly stolen**
- **The appropriation must be dishonest**
- **The person charged must not be the owner of the thing allegedly stolen**

Section 122 of Act 29 defines acts which will constitute appropriation as follows:

(1) An appropriation of a thing by a trustee means dealing with the thing by the trustee with the intent of depriving a beneficiary of the benefit of the right or interest in the thing or in its value or proceeds or a part of that thing.

(2) An appropriation of a thing in any other case means any moving, taking obtaining, carrying away or dealing with a thing with intent that a person may be deprived of the benefit of the ownership of that thing or of the benefit of the right or interest in the thing or in its value or proceeds or part of that thing

Furthermore, per section 120 of Act 29, an appropriation of a thing is dishonest,

- (a) If it is made with an intent to defraud or
- (b) If it is made by a person without claim of right and with a knowledge or belief that the appropriation is without the consent of a person for whom that person is a trustee or who is owner of the thing or that the appropriation would, if known to the other person, be without the consent of the other person.

At the close of the case for the prosecution, it was established that the cattle which the Accused person is alleged to have dishonestly appropriated probably belongs to PW1 Akwasi Iddrisa and the Accused is not the owner of the cattle stolen, it was also established that, the Accused dishonestly received one cow from one Abukari this is evidenced by the Accused admitting to have taken a stolen cow from one Fulani called Abukari in his investigation caution statement to the Police. The evidence also shows that there was an intent on the part of the Accused to deprive the owner of the benefit of his ownership and also, he had an intent to cause some economic loss to the owner thereof. This shows that there was an appropriation in terms of section 120 of the Act (ACT 29) and the appropriation was dishonest because it was done without the consent of the owner and the owner has been deprived of the benefit or of the use of it, however the critical question that arises is whether or not the Accused person was the one who dishonestly appropriated the stolen cattle. `

As stated above, the law posits that an Accused person in a criminal trial has no burden to prove his innocence. All he has to do is to raise a reasonable doubt in the case of the prosecution. The Accused person thus gave evidence and did not call any witness.

The Accused person's defence is that, sometime in September 2023, he purchased a cow from one Abukari, who reside at a place near Basabasa community in the Kintampo with the intention to use same to pay for his wife's bride price at Buipe. He stated that, on purchasing the cow from Abukari, he left it under his custody and care to enable him prepare and come back for it later at an appropriate time and Abukari agreed to keep same.

His case is that Sometime in October 2023, he went back to Abukari's house to request for delivery of the cow as he was ready at that time to accept delivery, however, Abukari promised to bring same to him. He said three days later, Abukari delivered the cow to him at his house in Tandini after which he made it ready for transportating to

Buipe. He said he took the cow to Buipe and upon presenting it to his wife's family, they rejected it for a reason that, according to their Dagaaba custom, they do not accept bride price for a pregnant woman since as at the time, his wife was pregnant and that he would have to wait till she delivers before he could present the bride price. According to him, the family agreed that he should sell the cow in order to obtain some funds to cater for the expenses associated with the wife's pregnancy and later at the appropriate time gather some funds and buy another cow and come for the presentation of the bride price.

He added that, following the decision to sell the cow, he offered it for sale at the Buipe market and it was purchased on the same day. He also said that he returned to Tandini on that same day, and On his arrival in the evening, he saw two Policemen in his house, and one of the Policemen informed him that a complaint of stealing of three cows has been lodged at the Police Station at Kintampo against him by one Akwasi Iddrisu, owner of the cows, he said he told the Policemen that he knew no one by name, Akwasi Iddrisu and has not stolen any cow, and further informed the Policemen that, he only bought one cow from one Abukari and that they may accompanied him to the said Abukari's house for confirmation.

He said the Police officers arrested him, and conveyed him to the Kintampo Police station where after four days in Police custody, he was granted Police inquiry bail and was instructed to procure Abukari for further investigation.

From the evidence adduced, there is no dispute about the fact that Accused person was never seen at the complainant's kraal stealing his cattle. Prosecution led no evidence to the satisfaction of this court that it was the Accused person who stole the complainants three missing cattle.

Furthermore, the Accused vehemently denied in his Caution Statement Exhibit 'A' tendered by prosecution and his evidence in court that he didn't steal the cattle but he bought one cow from one Fulani known as Abukari. However, in his exhibit 'A' he stated that sometime after the cow was delivered to him by Abukari, Abukari called him and informed him, that the cow was a stolen one. From the evidence and to me, prosecution should have charged the Accused together with Abukari,

It is clear that as part of the basic ingredients of stealing which is stated under Section 124 of the Criminal Act, Justice Akamba in a judgment delivered on the 13th of July, 2018 in the case of Ekow **Russel v. The Republic CRA J3/5/2014**, he stated that:

'when a person is charged with a criminal offence, it shall be the duty of the prosecution to prove his guilt beyond reasonable doubt, meaning the prosecution has the burden to lead sufficient admissible and credible evidence such that upon assessment of the totality of the evidence produced in court, there will be no doubt by the court that the Accused did in fact commit the offence'.

Prosecution led no evidence to the satisfaction of this court that it was the Accused person who stole the complainant's three cattle. PW1's evidence is to the effect that PW2 told him that if his cows are missing, he should contact the Accused person, because he woke him up at night to transport some cattle for him with his motorking, and later told him not to let it out because the cattle are connection ones. And PW2's evidence is that when the Accused came to him to wake him up at that time, he refused to transport the cattle for him because the time was odd, and the following day the Accused came to him that the cattle were stolen ones. In exhibit 'C' tendered in by prosecution which is the conversation between the Accused and PW2, it was to the effect that the cattle are connection ones, so which one is which. Did the Accused mention stolen ones or connection ones. PW2 is not a credible witness. Assuming that

connection ones means stolen ones, Accused never stated in his conversation with PW2 that he stole the cattle. It was stated nowhere by prosecution witnesses and their evidence before this court that the Accused stated that he stole the cows. No evidence was led by the prosecution connecting the Accused to the commission of the crime stealing.

The Accused person is also not a credible witness, he has cooked up stories to deceive this court. The Accused person told this court that the day Abukari gave the cow to him was that same day he transported the cow to Buipe to perform rights on his pregnant wife and the wife's family didn't accept it because the wife is pregnant, so they told him to sell the cow and use the money to cater for her. Accused said he sold it that same day and returned that same day to Tandini. Is the Accused telling this court that the wife's family did not know that the wife was pregnant until that very day and time he was presenting the cow to them, to perform the marital rights. The Accused story is full of fiction to me.

I am amazed by this piece of evidence by the Accused, he said that he purchased the cow from Abukari and told him to keep it and that he will come for it later. He said when he was ready he went to Abukari's house for the cow and he told him he will deliver it to him later. During cross examination, Accused told the court that it was the same cow that was delivered to him. So the question is if the cow the Accused purchased from Abukari and told him to keep was available the day he requested for it, why didn't Abukari delivered it to him upon request that same day, but told him to wait, and what was the Fulani's reason for not giving the cow to him upon request if the cow was indeed available.

There are also a lot of conflicts in the Accused evidence. The Accused said in his evidence to the court when he mounted the box that the Fulani delivered the cow to

him in his house, meanwhile during cross examination he said it was delivered to him at his farm at Asantekwa.

This transpired during cross examination on the Accused;

Q. where did Abukari delivered the animal to you

A. On the Asantekwa road

Q. In your paragraph 8 you said Abukari deliverd the cow to you in your house at tandini

A. That is not correct he delivered it to me in my farm

Q. What time did you set off to Buipe,

A. 8: 00 am

Q. What time did the tricycle that transported you arrive at your farm

A. Around 9:00 am

Q. So what time exactly did you set off

A. 9:00am

As I indicated earlier on, a lot of mismatches in the Accused evidence.

From the evidence adduced in court, the fact that the Accused bought the cattle from Abukari is not in doubt, because it cuts across all his evidence right from the time he was arrested and in his evidence in court. I am of the opinion that the Accused person bought a cow from one Abukari a Fulani, and he knew that the cow was a stolen one.

Considering the evidence adduced by both the prosecution and the defence, it is my view that the evidence of the Accused that he bought a cow from one Abukari sounds

more probable than the prosecution's case of stealing, however I am convinced by the evidence before me that the Accused was aware that the cow was a stolen cow, and he never took steps to restore it to the owner.

Section 147 of act 30 provides that "A person is guilty of dishonestly receiving any property which he knows to have been obtained or appropriated by any crime, if he receives, buys or in any manner assist in the disposal of such property otherwise than with a purpose to restore it to the owner".

I am therefore of the considered opinion that prosecution was not able to prove the offence of stealing but rather they proved dishonestly receiving.

As aforementioned, in criminal prosecution the burden is not on the Accused person to prove his innocence. All he needs to do is to raise a reasonable doubt in the case of the prosecution.

I find as a fact that the Accused Person has been able to raise a doubt in prosecution's case, the Accused never dishonestly appropriated the complainant 3 cattle per the evidence before me.

From the foregoing, I am of the opinion that the prosecution has not been able to discharge the burden on them to prove the guilt of the Accused person beyond reasonable doubt on the offence of stealing, he was charged with. However, from the totality of the evidence before this court, prosecution has been able to prove the offence of dishonestly receiving, and per the provisions in section 156 of ACT 30 which provides that "WHERE A PERSON IS CHARGED WITH STEALING A THING, AND RECEIVING THE THING KNOWING IT TO HAVE BEEN STOLEN IS PROVED, THAT PERSON MAY BE CONVICTED OF RECEIVING ALTHOUGH NOT

CHARGED WITH THAT OFFENCE.” The Accused per this provision in Act 30 is accordingly convicted on the offence of dishonestly receiving.

SENTENCING:

The Accused person is sentenced to pay a fine of 200 penalty units or in default serve a prison term of 10 months.

SGD

HH, LILY AMOAH-KANKAM

CIRCUIT COURT JUDGE