

**IN THE UPPER WEST CIRCUIT HELD AT WA ON MONDAY THE 10<sup>TH</sup> DAY OF  
APRIL 2024 BEFORE HIS HONOUR JONATHAN AVOGO ESQ. CIRCUIT COURT  
JUDGE**

**B7/31/2024**

THE REPUBLIC

VRS

1. HALITU SHAIBU
2. BELIKO SEIDU

**JUDGMENT**

**INTRODUCTION**

1. The Accused persons, Halitu Shaibu and Beliko Seidu were charged before me with one count of conspiracy to commit crime to wit stealing and stealing both counts contrary to sections 23(1) & 124(1) OF THE CRIMINAL OFFENCES ACT, 1960 (ACT 29)
2. A1 pleaded guilty after having understood the charges and the accompanying facts. A2 however pleaded not guilty to the charges against him and he was tried.

**FACTS OF THE CASE**

3. The facts as presented by the prosecution were that the complainant Osman Seidu a Fulani herdsman received information on 5/4/24 from a brother by name Amadou Seidu that another compatriot and a herdsman named Ibrahim Musash had seen accused person named Halitu Shaibu driving complainant's cattle numbering fifteen (15) towards the Poyentanga dam in the Wa East District of the Upper West Region. Complainant's brother told him that the compatriot

herdsman was very sure of the identity of the cattle to be that of complainant but did not know who the herdsman was and so he suspects the cattle to be stolen.

4. That upon receipt of this information, complainant picked his brother and the went towards the location described and saw the cattle being driven by the accused person and immediately identified all 15 cows to be his that very morning his herdsman took out for grazing. Complainant then got the police at Poyentanga barrier informed and the rushed to the scene to arrest the accused person. The 15 cattle were then put in the care of another herdsman by name Yakubu who was to take the cattle back to complainant's kraal at Kalahi whilst complainant joined police to take the accused person to the main police station in Wa. During interrogation, A1 admitted the offence and mentioned A2 as his accomplice and he was invited and identified by A1 and he was detained by the police.

#### **5. Evidence of Prosecution Witness 1 (PW1)**

PW1 the complainant told the court of how he received information from a brother that he was also informed by a compatriot that he had seen 15 cows being led by accused towards the Poyentanga dam. The compatriot a colleague herdsman to complainant said he was very certain the cattle was from the kraal of the complainant but did not know who the herdsman was so he suspects the cattle could have been stolen and so they should move to the location he described. PW said he immediately set off on his motor bike and upon arriving at the banks of the dam he saw accused driving the cattle further ahead and he stopped and got him arrested because he had earlier alerted the police who were behind him. That accused was taken in by the police and taken to the main police station in Wa.

#### **6. Evidence of Prosecution Witness 2 (PW2)**

Since A1 was the one who reported of A2 being his accomplice, he was arraigned as a witness to prove that A2 was indeed the one who he acted together with in committing the offence. A2 who was convicted because he pleaded guilty by himself to committing the offence and was arrested told the court that A2 was a neighbor and that they grew up together and as colleague Fulani herdsmen they took cattle to graze in the bush. He added that he was riding his motorbike in the bush when he received a phone call from A2 to wait on him because he was bringing him some cattle to take to some colleague Fulani people who will be waiting at the Poyetanga Dam. That not long A2 arrived and gave him the cattle in the bush and he was on his way to deliver the cattle that PW1 arrived and got him arrested.

Interestingly, A1 failed to tell the court whether A2 took his motorbike away for him to pick up later or not but added that A2 had told him that when their compatriot recipients take the cattle one of them will then bring him back. Bringing him back too A1 did not tell the court whether he was bringing him back to where he left his motorbike or to the community where he lives and ended his evidence.

#### **7. Evidence of Prosecution Witness 3 (PW3)**

PW3 the police investigator told the court he was on afternoon shift when the incident was reported to him by the complainant in the company of the Poyetanga police That he took police investigative caution statement from A1 during which he admitted the offence and added that he was given the cattle by A2 who happens to be PW1's younger brother. That A2 was subsequently arrested and added to the charge sheet. The investigator complained that PW1 had earlier declined further assistance in the investigations and refused to lead police to the scene of crime but

he was informed by the arresting officers that all 15 cows were safely returned to PW1's kraal in Kalahi the community he lives. He proceeded to tender the investigative caution statement of A2 which was read to his hearing and tendered together with the investigative charge statement and were appropriately marked Exhibits 'A' & 'B'.

#### 8. CLOSE OF PROSECUTION'S CASE

The prosecution called three witnesses and closed its case. At the close of the prosecution's case, since A2 was not represented the court suo moto had to determine if a prima facie case was made up against A2 to allow him be invited to put up his defense to the two counts charged.

#### 9. THE LAW ON SUBMISSION OF NO CASE

The fate of a submission of no case to determine if a prima facie case was made will depend on the burden discharged by the prosecution at the close of its case viewed against **Sections 173 & 174** of the Criminal Procedure Act, 1960 (Act 30).

It is respectfully provided by sections 173 & 174 of Act 30 as follows:

*173 " if 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 him to make a defense, the court shall, as to that particular charge, acquit him"*

*174 (1) "At the close of the evidence in support of the charge, if it appears to the court that a case is made out against the accused sufficiently require him to make a defense, the court shall call him to enter his defense"*

10. There are a number of cases that give clue as to what would amount to being sufficient for the Accused to open his defense. In the cases *State vs Ali Kasena (1962) 1 GLR 144 S.C*, *State vs Annan (1965) GLR 600* & *Mali vs The State (1965) GLR 710 S.C*, the courts held *that* if at the end of the case for the prosecution, the court requires further evidence before it can decide on the issues raised in the case for the prosecution, the irresistible inference is that the prosecution has failed and the accused should be acquitted.
11. It is important to note that submission of no case is non- negotiable in that if the court finds that the prosecution is unable to make a sufficient case out against the accused to warrant him /her to open his/her defense at the close of its case in respect of the charges/charge then the court shall acquit the accused.

## **PARTICULARS OF THE OFFENSES CHARGED**

As I stated earlier A2 is standing trial on two counts: conspiracy to steal and stealing. Section 23[1] of Act 29/60 states “If *two or more persons agree to act together with a common purpose for or in committing or abetting a crime whether with or without any previous concert or deliberation, each of them is guilty of conspiracy to commit or abet that crime as the case may be.*

Under the law, prosecution is required to establish that either they agreed together to steal the 15 cows or did actually act together to commit the offence with or without any previous deliberation, see *COP VS AFARI & ADDO [1962] 1 GLR 483*. In the case of *FRIMPONG ALIAS IBOMAN VS THE REPUBLIC [2012] 1SCGLR 297* at 322 Dotse JSC said

*“ for the offence of conspiracy, it necessary to establish the following [1] agreement to commit the unlawful act of robbery- acting for a common design. There need not be any prior deliberation.*

*[11] Intention on their part to commit that unlawful act as manifested in their common pursuit of the robbery agenda ...."*

Section 124(1) of Act 29, states:

"A person who steals commits a second-degree felony."

Also, section 125 of Act 29, defines stealing thus:

"A person steals who dishonestly appropriates a thing of which that person is not the owner".

In order to succeed, the prosecution would have to establish beyond reasonable doubt;

- (i) That the person charged must not be the owner of the thing allegedly stolen;
- (ii) That he must have appropriated the thing;
- (iii) That the appropriation must have been dishonest."

## **ANALYSIS OF PROSECUTION'S CASE**

A1 turned prosecution witness against A2 because he accuses him of having conspired with him to steal the 15 cows alluded to conspiring with A2, the evidence he gave to substantiate his claim was weak because he could not adduce evidence to support a discussion they had when they met to plan to steal the animals. At the end of his evidence when he was subjected to cross examination by A2, the following ensued:

Q-Can you mention any witness who was present when you planned to steal the animals with me.

Ans- No one was present, I however left my motorbike in the bush

Q- Can you show any form of correspondence to prove that you called me or i called you me meet up with me to take the cattle to where I wanted you to?

Ans- Yes you called me on phone but I lost my phone in the course of taking the cattle to the recipients.

Q- I put it to you that I could not have stolen my own cattle because the animals belong to my family

Ans- You asked to take the animals to the Fulani men waiting at the dam

Q- Who were the recipients waiting at the dam to receive the cattle, mention their names because I could not have just told you to go deliver the animals to some Fulani men.

Ans- You described where I should go and that two men will meet me there.

It can be gleaned from the evidence of A1 that he could not support his claim that A2 gave him the animals to drive to some persons and all he attempted doing was to involve A2 in the offence but that did not succeed. Based therefore on the onus placed on prosecution to prove their case to the level of a prima facie case, I hold that they failed and accused will not be invited to put up a defense.

SGD: HIS HONOUR  
JONATHAN AVOGO ESQ  
CIRCUIT COURT JUDGE, WA