

CORAM: HER HONOUR HALIMAH EL-ALAWA ABDUL BAASIT (MRS), JUDGE,
SITTING AT THE CIRCUIT COURT, DANSOMAN-ACCRA ON THE 28TH DAY OF
FEBRUARY, 2025.

SUIT NO. CCD/CC7/181/24

THE REPUBLIC

VRS

ISAAC TETTEH

Accused Person present.

Chief Inspector Portia Nuarko for the Prosecution present.

No Legal Representation.

JUDGMENT

Background:

1. On the 01/06/2024, the Accused Person was arraigned before this instant Court on the charges of **Stealing: Contrary to section 124(1) of the Criminal and other Offences Act, 1960 (Act 29)**. The Brief Facts of the case as narrated by D/PW/C/Inspector Ruby Osabu-Quaye are that the Complainant, Sariki Ali Alhassan is a business man and resides at Manhia-Accra whilst the Accused person, Isaac Tetteh is a Sales Attendant at Complainants' shop at Timber market. The complainant deals in the sale of stainless-steel pipe and hired the Accused Person as a Sales Attendant was to take a commission on every sale he made. Accused person failed to make sales for a year with the excuse of low patronage of the pipes. On 17/05/2024, the Accused Person went for more pipes from Complainant under the pretext of supplying same to a customer and making sales later but failed.

2. This made the Complainant suspicious, demanded for stock taking and in the process, found out that the Accused Person has sold 23 pieces of 3 inches stainless steel pipe valued at GH¢ 126,500.00, 8 pieces of 50x50x2mm pipe valued at GH¢16,000.00, 22 pieces of 40x40x2mm pipes valued at GH 33,000.00, 10 pieces of stainless-steel angle 4mm pipes valued at GH¢20,000.00 and 168 pieces of 22mm stainless steel pipes valued at GH¢42,000.00 making a total sale of GH 237,500.00 unaccounted for. When the Accused Person was questioned, he explained that he sold the goods and used the money to purchase cocoa land for farming and gold concession for 'galamsey' at his home town Subrisu. On 15/06/2024, Complainant reported the case of which the Accused Person was arrested and subsequently arraigned before Court.

3. **The Plea**

On the 01/06/2024, the Accused Person, pleaded not guilty to all offences levelled against him after same was read and explained to him in the Twi Language. Having pleaded not guilty, the burden now lies on the Prosecution to adduce enough evidence to establish beyond reasonable doubt that the Accused Person indeed committed the offences he has been charged with. Article 19(2) (c) of the Constitution 1992 provides that '*a person charged with a criminal offence shall be presumed innocent until he is proved or has pleaded guilty*'. Thus, throughout a criminal trial, the burden of proving the guilt of the Accused Person remains on the Prosecution. (See **Asante vs. The Republic** (1972) 2 GLR 177).

4. As such, the Prosecution assumed the burden of proving the guilt of the Accused Person beyond reasonable doubt and at the close of the case of the Prosecution, the Court has to determine whether the Prosecution has established a prima facie case

against the Accused Person to require him to open his defence. An Accused Person is generally not required by law to prove anything, he is only to raise reasonable doubt in the mind of the Court as to the commission of the offence to secure an acquittal. (See **COP vs Antwi** (1961) GLR 408 SC). In other words, the Prosecution, per their witnesses and evidence before the Court, must establish that the Accused Person indeed committed the offence. Section 11(2) of the Evidence Act, 1975 (NRCD 323) provides that '*...in 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 could find the existence of a fact beyond reasonable doubt*'.

Evidence of Prosecution

5. To prove their case, Prosecution called Two (2) Witnesses to testify and tendered in the following as Exhibits;

Exhibit "A" - Statement at the Police Station dated 17/6/2024.

Exhibit "B" - Accused Person's Caution Statement dated 12/6/2024.

Exhibit "C" - Charge Statement of Accused Person dated 17/06/2024.

Exhibit "D" - Forensic Audit Report dated 18/07/2024

Testimony of Prosecution Witnesses

6. The first Prosecution Witness is the Complainant, Sariki Ali Alhassan, a resident of Manhia in Accra and business man who deals in stainless steel pipes. He testified, among others, that he has a shop at Timber Market which he entrusted the goods into the care of the Accused Person. He then reduced the prices of the pipes for the Accused Person so that he could make some income from the sale and this was the arrangement for about Three (3) years now. PW1 testified further that he absented himself from the shop for about One (1) year, but the Accused

Person kept informing him that there were no sales. However, on 17th May, 2024, his wife informed him that the Accused Person had come for some 40*40 square stainless-steel pipes of which he questioned the Accused Person because those particular pieces of pipes were in the shop which he the Accused Person claimed had not been sold. The Accused Person then responded that the buyer needed 15 pieces, so he wanted to take those in the house and leave those in the shop. The next day, PW1 called the Accused Person for the money, but he informed him that the buyer only paid GH¢2000.00 with a promise to come for the goods later. Two (2) weeks later, the Accused Person rendered no sales but kept saying one story after another.

7. PW1 testified further that he got suspicious and planted a supposed buyer on the Accused Person at the shop and the report he got was that all such pipes had been sold out by the Accused Person. Upon a follow up to the shop, he realized that the shop was virtually empty of which he confronted the Accused Person who informed him that he had sold the goods on credit. The Accused Person promised to get the said money from the debtors but failed to do so and later informed him that he had used the money to acquire a cocoa farm and gold concession. PW1 testified again that on 12/06/2024, the Accused Person came in the company of others to plead for time to pay the money but upon interrogation, which was recorded on camera with the Accused Person's consent, he confessed to stealing various pipes to the tune of Ghc237, 500.00, of which he reported at the Police Station.
8. The next Prosecution Witness was Detective Chief Inspector Ruby Osabu-Quaye stationed at James Town Police station who testified that he got to know both parties when the case was referred to him and his testimony included what PW1

had narrated to him. PW2 however added that as part of investigation, the Accused Person was cautioned severally to lead the Police to the said land acquired with the complainant's money but all attempt proved futile. He concluded his testimony by tendering, among others, an Audit Report after the Complainant's shop had been audited in the presence of the Accused Person.

Defence of the Accused Person

9. On the 08/01/25, the Court held that a prima facie case had been made against the Accused Person which required him to open his defence in accordance with Section 174 of the **Criminal and Other Offences (Procedure) Act, 1960(Act 30)**. Consequently, on the 6/02/25, the Accused Person opened his defence wherein he stated that he has been working with the Complainant for about Three [3] years now. He admitted that he sold the said items but mistakenly used the money but intended to get the money back for the Complainant. The Accused Person added that he has since pleaded with the Complainant that he has used the money and would work to get the money for him. However, the Complainant asked him to follow him to the Police Station to sign and undertaking but rather caused his arrest and he was detained at the Police Station. He concluded his defence by pleading with the Court and the Complainant to allow him to go and work and get the money.

Analysis

10. Accused Person has been charged with the offence of **Stealing**: Contrary to Section 124(1) of Act 29. Section 125 of Act 29 provides that, '*... a person steals if he dishonestly appropriates a thing of which he is not the owner...*' As such, the duty of the Prosecution is to establish elements of the crime to include; '*dishonesty*', '*appropriation*', '*property*', '*belonging to another*', with the '*intention of permanently*

depriving the other of it'. The Particulars of the Offence reads '... Isaac Tetteh, Rewinder, on the 12th day of June, 2024 at Timber market, Accra in the Greater Accra Region and within the jurisdiction of this court did dishonestly appropriate cash the sum of GH 237,500.00 the property of Sariki Ali Alhassan...'

11. In making a final determination of this case, the court relies on testimony of Prosecution Witnesses which was to the effect that the Accused Person had stolen the said items. However, the Accused Person had the chance to cross-examine the first Prosecution Witness and the following transpired;

***BENCH:** ... Any Cross-examination?*

***ACCUSED PERSON:** No, my Lady. All that he is saying is the truth.*

***BENCH:** This is your only opportunity to cross examine the witness to prove your innocence.*

***ACCUSED PERSON:** No cross-examination.*

12. Similarly, when the second prosecution ended his Evidence in Chief, the Accused Person was invited by the Court to cross-examine the witness but the Accused Person again failed and/or neglected to cross-examine PW2. The following transpired;

***BY COURT:** ... Any cross examination?*

***ACCUSED PERSON:** I do not have any questions for him.*

13. It will be observed from the above that the Accused Person neglected to cross-examine both Prosecution Witnesses and according to S. A. Brobbey in his book **Practice and Procedure in the Trial Courts and Tribunals of Ghana**, 2nd Ed, 2011 at page 165, '*...when a party has given evidence of a material fact and he is not cross-*

examined upon that, he need not call further evidence of that fact: see Fori v Ayirebi [1966] GLR 627, SC ... In Quagraine v Adams [1981] GLR 599, CA, it was held that where a party makes an averment and his opponent fails to cross-examine on it, the opponent will be deemed to have acknowledged, sub silentio, that averment by the failure to cross-examine. See also Browne v Dunn (1894) 6 R 67, HL...' As such, the implication in this instant case is that the Accused Person, having failed to cross-examine the Prosecution Witnesses, means he has acknowledged the averments made by the said witnesses.

14. Again, it will be observed from the above that the Accused Person in his defence did not deny that he stole the said items. The following took place during cross-examination;

Q: *Have a look at the Charge Sheet, you were charged with dishonestly misappropriating an amount of GH¢237,500.00?*

A: *Yes.*

Q: *Per the defence you just gave the Court, is your case that you mistakenly used the money you sold?*

A: *Yes.*

Q: *By implication, you want to tell this Court that you have mistakenly used GH¢237,500.00?*

A: *Yes.*

15. In view of the evidence on record, the testimony of Accused Person is more or less an admission to having committed the offence. Thus, the admission of the Accused Person amounts to an acceptance of guilt and same can be described as a confession. According to the learned Justice Brobbey in his book **Essentials of the Ghana Law of Evidence**, 2014 at page 121 stated as follows; '*...confession is a variant of admission. Obviously, if the confession statement amounts to an admission of a crime by the Accused Person, it can be admitted in evidence on bases similar to the admissibility of admission. When the confession is admitted, it can form the basis of conviction...*'. It must however be stated emphatically that the confession of the first Accused Person in this case was made as at the time he opened his Defence and as such part of the evidence before the Court.

Conclusion

16. In the case of **Lutterodt vs. Commissioner of Police** [1963] 2 GLR 429-440, Ollennu JSC through the Supreme Court stated that; '*...if quite apart from the Defendant's explanation, the Court is satisfied on a consideration of the whole evidence that the accused is guilty, it must convict...*' In view of this, the evidence on record and the foregoing reasons, I find that the Prosecution has led sufficient evidence to prove beyond reasonable doubt in establishing the charge of stealing against the Accused Person. Thus, the evidence on record shows that the Accused Person dishonestly appropriated the property of the Complainant to the tune of GH¢237,500.00. I therefore find the Accused Person guilty of the offense of **Stealing contrary to section 124(1) of the Criminal and other Offences Act, 1960 (Act 29)**, the Accused Person is hereby convicted and shall be accordingly sentenced.

H/H HALIMAH EL-ALAWA ABDUL-BAASIT

CIRCUIT COURT JUDGE