

IN THE DISTRICT COURT HELD AT WEIJA ON MONDAY THE 31ST DAY OF
OCTOBER, 2022 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS), DISTRICT
MAGISTRATE

SUIT NO. G/WJ/DG/272/22

THE REPUBLIC

VRS

MICHAEL SIMPSON @ KWAATEYE

ACCUSED PRESENT

C/INSPECTOR AGALIK SALIFU FOR THE PROSECUTION.

RULING

The accused person was arraigned before this court on eight counts of causing unlawful damage, unlawful entry and stealing contrary to sections 172, 152, and 124(1) of the Criminal Offences Act, 1960 (Act 29) as amended.

The accused person pleaded not guilty to the charges preferred against him.

It is trite learning that under Article 19(2) (c) of the 1992 Constitution, every one charged with a criminal offence is presumed innocent until the contrary is proved. In other words, when an accused person is arraigned before a court in any criminal trial, it is the duty of the prosecution to prove the ingredients of the offence charged against the accused person beyond reasonable doubt. This position of the law was reiterated in *Oteng v The State* [1966] GLR 352 at page 355, where the Supreme Court held as follows;

“...the citizen too is entitled to protection against the state and that our law is that a person accused of a crime is presumed to be innocent until his guilt is proved beyond reasonable doubt as distinct from fanciful doubt.”

Section 11(2) of the Evidence Act, 1975 (N.R.C.D 323) states as follows;

“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 could find the existence of a fact beyond a reasonable doubt.”

Reasonable doubt was explained by Denning J (as he then was), in **Miller v. Minister of Pensions [1947] 2 All ER 372 @ 373** as "...it need not reach certainty, but it must carry a high degree of probability, proof beyond reasonable doubt does not mean proof beyond a shadow of doubt.

Section 15(1) of NRCD 323 provides as follows;

“Unless and until it is shifted, the party claiming that a person is guilty of a crime or wrong doing has the burden of persuasion on that issue.

In the case of the accused except in cases where a statute throws the burden upon him, he is not obliged to prove anything. All that the law requires of him is to raise a reasonable doubt as to his guilt on the fact in issue. Unless and until the Prosecution has discharged the burden of proving the guilt of the accused to the required degree, the burden does not and will not shift on to the accused person to raise reasonable doubt in the case of the prosecution.

The Prosecution called three witnesses Millicent Dovlo (PW1), Victoria Kofito (PW2) and No.6350 D/PW/CPL Benedicta Twum Ampofo of Weija District Police, District CID, the investigator in the case.

PW1 told the court that on 11th April 2022 at about 1.00am, she woke up and found her handbag and travelling bag on the floor. According to her, immediately, she suspected that thieves or thief had broken into her room. She rushed to her sister in law Joyce Quarshie's room to call her only to find out that her pant was torn which was done by the assailant because it was not so before. Upon a search, she discovered that her techno spark 8 valued at GHC750.00, her friend Raphael's Samsung galaxy phone which he gave to her to charge for him and her money valued at GHC1,500.00 had been stolen as well as her pomade palmer's cocoa butter. She later found out that the said pomade was left at her neighbour's house with a chunk of it scooped out. According to her, her neighbour Victoria Kofito informed her of the theft at her house as well and that she saw the accused who happen to be Kwaateye. She stated that she reported the accused to the police and he was arrested.

PW2 also stated that on 11th April 2022 at about 1;30 am, she had finished urinating in the chamber pot and was trying to sleep when one Kwaateye a teenager came into her room naked with pomade smeared all over his body to seal Samsung galaxy A3 valued GHC700.00 which belonged to her daughter Worlanyo. According to her, she grabbed him but because he had smeared the pomade on himself, he slipped from her grasp and bolted with it. In the morning, she asked a friend of the accused called Emma if he had seen Kwaateye and he immediately said it was not Kwaateye who came to steal from her. She added that she found the palmers cocoa butter in her room which Michael had brought.

PW3 the Police investigator told the court that on 11th April 2022, a case of unlawful damage, unlawful entry and stealing was reported by the complainants Millicent Dovlo and Victoria Kofito and the case was referred to her for investigation.

Statements were taken from the complainants and a witness statement was taken from Grace Worlanyo. She virtually repeated the statements of the two complainants and added that the

accused person was later arrested and detained. According to her, the accused person in both investigation caution and charge statements denied any knowledge of what he was being accused of. Accused person informed the police that he went to bed at 0000 hours and only woke up at 0700 hours.

PW3 informed the court that he took the witness statement of Raphael Awaworyi and retrieved the palmer's cocoa butter and a white torn pant.

She visited the crime scene and photographs of damage caused to first complainant's door lock was taken. There was no visible damage caused to second complainant's door since it was already faulty at the time.

She added that on spot investigations revealed that the accused is known for stealing and that it was always difficult to get enough evidence against him. She subsequently took investigation charge and caution statements from the accused and arraigned him before this court.

On count one, accused person was charged with causing unlawful damage contrary to Section 172 (1)(b) of Act 29 which states as follows;

A person who intentionally and unlawfully causes damage to a property to a value exceeding one million cedis commits a second degree felony.

Prosecution is therefore bound to prove the following elements of the offence in order to sustain a conviction against the accused person:

- (1) that damage was caused to Millicent Dovlo's property by the accused person;
- (2) that the damage was caused unlawfully and intentionally and
- (3) the value of the property damaged exceeds one million cedis

PW1 told the court that she woke up at about 1.00am and found her handbag and travelling bag on the floor. She could not specify who caused damage to her door. According to her, her

neighbor Victoria Kofito informed her of the theft in her house and said she saw the thief who happened to be the accused. She did not say that her neighbor had seen the accused person in her house and she never said anything about damage to her door or the cost of the doorlock. The prosecution failed to prove to the satisfaction of the court that the accused person caused damage to the doorlocks of Millicent Dovlo which value exceeds one million cedis. There is therefore no need to go further to examine whether or not the damage was caused unlawfully and intentionally.

I accordingly find that the prosecution has failed to prove the essential elements of the charge of Causing Unlawful Damage under count one against the accused person. Accused person is accordingly acquitted and discharged on count one.

On count two and seven, the accused person was charged with unlawful entry contrary to section 152 of Act 29 which provides as follows;

A person who unlawfully enters a building with the intention of committing a criminal offence in the building commits a second degree felony

The prosecution has the burden to prove the following ingredients of the charge

1. that the accused person unlawfully entered the rooms of Millicent Dovlo and Victoria Kofito
2. that the accused person had the intention of committing a criminal offence in the rooms of Millicent Dovlo and Victoria Kofito

Millicent Dovlo in her evidence informed the court that she woke up and found her handbag and travelling bag on the floor. There is nothing in the evidence to suggest that accused person was the one who entered her room. She relied on the assertion of her neighbor Victoria Kofito

that the accused person had entered her room and deduced that he was the one who entered her room.

Victoria Kwaateye on the other hand stated that the accused person came into her room naked with pomade smeared all over his body to steal Samsung galaxy A3 valued at GHC700.00 and that when she grabbed him, he slipped from her grasp which assertion was vehemently denied by the accused person as he indicated that he had gone to bed at 0000 hours and slept till 0700 hours as stated in the evidence of PW3. Indeed PW2 corroborated the story of the accused person when she stated at paragraph 7 of her witness statement that she asked a friend of the accused person Emma, whether he had seen him and the friend stated that accused person was not the one who stole from her.

Prosecution failed to lead any evidence by way of finger prints to link accused person to the one who had entered the two rooms unlawfully. PW3 stated at paragraph 13 of her witness statement that on spot investigations revealed that accused is known for stealing and it was always difficult to get enough evidence against him.

I find that based on paragraph 13 of the witness statement, PW3 did not carry out any conclusive investigations to link the accused person to the crime but rather based her conclusions on the fact that accused was **“known for stealing and that it was always difficult to get enough evidence against him”** (Emphasis is mine)

I find that the prosecution has failed to establish the essential elements of the offence of unlawful entry against the accused person under counts two and seven. Accused person is accordingly acquitted and discharged on counts two and seven.

The prosecution again charged the accused person with stealing under counts three, four, five, six and eight.

Section 124(1) of Act 29 provides as follows;

“A person who steals commits a second degree felony.”

Section 125 of Act 29 defines stealing as follows;

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

Azu Crabbe CJ (as he then was) in the case of **AMPAH v THE REPUBLIC [1977] 2 GLR 171, CA** held as follows;

“To establish the offence of stealing, the prosecution are required to prove only the three elements of: (i) dishonesty; (ii) appropriation; and (iii) property belonging to another person.”

On dishonest appropriation, section 120(1) of Act 29 provides as follows;

An appropriation is dishonest if it is made with intent to defraud or 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.

In **AMPAH v THE REPUBLIC** cited supra, the court indicated that there are two kinds of dishonest appropriation: an appropriation made without claim of right and an appropriation without the consent of the owner. Proof of either one would be sufficient evidence of dishonest appropriation. The court further held that a person who employs deceit cannot rely on consent as a defence to a charge of stealing because consent obtained by deceit is void.

In **STATE v AMOAKO [1967] CC 58**, where an accused held some monies belonging to his employers because he had not been paid for some months, the court held that he had no authority

to pay his own salary from the amount he held nor would the council have consented if he had informed them of his intention to withhold the monies. Therefore the appropriation was dishonest.

On Appropriation, section 122(2) of Act 29 provides as follows;

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

In **ANING v. THE REPUBLIC [1984-86] 2 GLR 85**, it was held as follows:

“If counsel is right, then no one can be convicted of stealing property of the Ghana contingent if he is found with the goods in its area of operations. The truth of the matter, however, is that even in those jurisdictions where a “carrying away” is an essential part of the offence of larceny it has been held that a bare removal from the place in which the thief found the goods, though he does not make off with them, is sufficient.”

On ownership, section 123(3) of Act 29 provides;

In proceedings, in respect of a criminal offence mentioned in subsection (1), it is not necessary to prove ownership or value.

Applying the law to the facts of the present case, to establish the offence of stealing, the prosecution was required to prove that the accused person dishonestly appropriated Techno spark 8, mobile phone belonging to Millicent Dovlo valued at GHC750, A Samsung galaxy belonging to Raphael Awaworyi valued at GHC1,800.00, the sum of GHC1,500.00, property belonging to Millicent Dovlo, palmer’s cocoa butter valued at GHC60.00 belonging to Millicent Dovlo and a Samsung galaxy A3 belonging to Grace Worlanyo valued at GHC700.00

From the evidence, Prosecution failed to discharge the burden placed on them to prove the elements of the offence of stealing against the accused person. PW3 only relied on the so called on spot investigations **which revealed that accused person is known for stealing and that it was always difficult to get enough evidence against him** (emphasis is mine)

In *Homenya v The Republic* [1992] 2 GLR 305, it was held as follows;

“The first and mandatory duty of a trial judge in a criminal trial is to examine the case of the prosecution so as to determine whether the prosecution has established the essential ingredients of the charge levelled against the accused person. If the prosecution has not succeeded in the task, then the trial judge is not bound to look at the defence of the accused at all. The trial judge is mandated under sections 173 and 271 of Act 30 to acquit and discharge the accused person.”

Applying the law cited supra to the facts of the present case, I find that the evidence adduced by the prosecution is incapable of substantiating a conviction as prosecution has not made out a sufficient case to warrant calling on the accused person to open his defense in respect of all the charges. Accordingly, the accused person is hereby acquitted and discharged on all eight counts.

H/W RUBY NTIRI OPOKU (MRS)
(DISTRICT MAGISTRATE)

