

**CORAM: HER WORSHIP (MRS) ROSEMARY EDITH HAYFORD, SITTING AS
DISTRICT MAGISTRATE, SEKONDI DISTRICT COURT "B" ON 22ND
DECEMBER, 2022**

CC/NO. 4/23

THE REPUBLIC

V

MICHAEL DICKSON OTABIL

TIME: 9:00 AM

ACCUSED PRESENT

COMPLAINANT PRESENT

SGT ABREFI NTIAMOAH FOR THE REPUBLIC PRESENT

ACCUSED PERSON UNREPRESENTED

JUDGMENT

The accused person herein is charged with the offence of unlawful entry contrary to section 152 of the Criminal Offences Act 1960, (Act 29) and stealing contrary to section 124 of the same Act. According to the particulars of offence in count 1 Accused is a Sign-writer. On the 17th day of July 2022 at 11.00 a.m. in Sekondi in the Western

Magisterial District and within the jurisdiction of this court he unlawfully entered Methodist K. G. and Primary School Sekondi with intent to commit a crime.

In respect of count 2, the particulars were that on the same date and time as above in Sekondi and within the Jurisdiction of this court, the accused stole two ceiling fans valued at GHC508, the property of Methodist K. G. and primary school, Sekondi headed by Miss Juliana Essel.

He pleaded not guilty after both charges were read and explained to him in fante.

According to the facts presented by the Prosecution, the complainant is the Headmistress of Sekondi Methodist K. G. and Primary School while the accused is a sign-writer staying at Nkontompo. The Sekondi Methodist Primary school has recently experienced a series of thefts. On 17/07/22 around 11.00 am, the accused went to one of the classrooms of the school and stole two ceiling fans. The accused having succeeded to steal the ceiling fans was escaping with the items but was spotted by some children who were playing around the school. The children immediately raised an alarm which led to the arrest of the accused with the ceiling fans at the school premises by some passersby. Sekondi police received information about the arrest of the accused and therefore, a team of police was dispatched to the scene. The team later returned to the station with the accused and the alleged stolen items as exhibits. The complainant later went to the station and identified the exhibits as the property of the said school. A cautioned statement was obtained from the accused during the police investigation and after the investigation, the accused was charged with the offences and arraigned before this court.

As the accused person had pleaded not guilty, the onus lay on the prosecution to produce evidence that would establish a prima facie case against the accused person by the close of their case.

It is trite that in criminal prosecutions it is the prosecution that carries the burden to prove the guilt of the accused person beyond reasonable doubt. The accused has no such burden to prove his innocence. All he needs to do is to raise a doubt in the case of the prosecution. This is expressed in *section 11(2) of the Evidence Act 1975, NRCD 323* which provides 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 could find the existence of the fact beyond reasonable doubt”.

In an effort to discharge its burden, therefore, the prosecution led evidence through five witnesses, the complainant PW1, the investigator - Detective Inspective Isaac Eshun and three other school children.

PW1 is the Headmistress of Sekondi Methodist K. G. and Primary School, Boundary Road 3rd Street STMA, Sekondi. She is the complainant. She averred that the school had been experiencing some theft for a while now whereby on each occasion ceiling fans among others had been stolen. She said she received a call on the 13th of July 2022 while at church that a thief had been arrested at her school with the school's two ceiling fans and that he had been sent to the Police Station. PW1 said she proceeded to the police station and identified the exhibits and lodged a complaint

The evidence of PW2, PW3 and PW4 can be said to be the same. The addition is that PW3 indicated that at the time the accused person approached them he was holding a

white sack. She told the court that on the 17th of July, 2022 at about 12noon she and her two other friends PW3 and PW4 were playing at the Boundary Road KG/Primary school when they were approached by the accused who enquired about a brother who played trumpet. PW2 stated that PW3 responded they had not seen him. Thereafter accused climbed the first floor of the school building and shortly afterwards returned with a blue polythene containing two ceiling fans heading towards Europeans Town in Sekondi. PW2 said they raised the alarm and the accused was arrested and taken to the police station

PW5, is the investigator in charge of the matter. He recounted that the accused was arrested and brought to the police station on the 17th of July 2022 while he was on duty. In the possession of the accused were two Kepase ceiling fans, a small whitish bag containing screws, nuts and a flat screwdriver. The complaint was that the accused had stolen the two ceiling fans from Boundary Road 3rd Street KG/Primary School. PW1, the Headmistress of the school aforementioned identified the fans as the property of the said school. According to the Investigator, he took the accused person and PW1 to the scene of the crime where the fan hooks and its regulators with inscriptions Kepase were identified without the blades and motor. PW5 tendered pictures of the hooks, the Kepase regulators and the blades and motor and same were admitted and marked as Exhibits A, B and C respectively. PW5 indicated that he subsequently took the accused to his aunt at Airport Ridge where the accused claimed to have taken the said fans from. However, the allegation was not true as the aunt indicated that what he gave the accused was just one Bristol fan blade without its regulator. PW5 tendered a picture of the Bristol regulator taken at the accused person's aunt's place as Exhibit D. He subsequently took investigation cautioned and charge statements from the accused. The same were tendered, admitted and marked as Exhibits E and F.

The issues for the court to determine are;

1. Whether or not the accused unlawfully entered the Methodist K. G and Primary School with the intent to commit crime
2. Whether or not the accused persons appropriated the two fans with a dishonest intention to steal same.

Section 152 of the **Criminal Offences Act** under which the accused is charged provides that:

“A person who unlawfully enters a building with the intention of committing a criminal offence in the building commits a criminal offence.

Section 152 further explains unlawful entry as:

“a person unlawfully enters a building if that person enters otherwise than in the exercise of a lawful right or by the consent of any other person able to give the consent for the purposes for which that person enters’.

To constitute the offence the elements that are required to be proved by the prosecution are:

- **That there was an entry**
- **That the entry was unlawful**
- **That there was an intention to commit the offence**

It is not disputed that the accused entered the premises of the school but the real question to determine is whether or not the said entry was unlawful and whether it was with an intention to commit a criminal offence. In *Kanjarga v The State* [1965] GLR 479 SC, Ollenu JSC held that:

“to establish the crime of unlawful entry, the prosecution must in addition to proving entry, prove that an intent to commit a crime on the premises existed at the time of entry and was the purpose for the making of the entry. Therefore, if a person entered premises for a lawful purpose, i.e. to visit a friend, and while in the room he saw a diamond ring, which he coveted and pocketed, he could properly be convicted of theft of the diamond ring, but a conviction for unlawful entry with intent to steal would not accord with the law”.

In the instant case, the evidence shows that the accused entered the compound of the school with the claim that he was looking for his friend. He approached PW2, PW3 and PW4 and made enquiries. They knew not this friend for which reason the accused continued his search. It must be noted that this is a private school and therefore it is private property and for that matter for anybody appearing there, the first place to go would be the reception, in the absence of that the Headmistress' office. It is not known whether the accused did any of these two things. The evidence of PW2, PW3 and PW4 which is consistent is rather that after the enquiry of his supposed friend whom he said was at the church, the accused rather went to the first floor of the school building. He went there without recourse to anyone or without the consent or permission of the Headmistress or whoever was in charge. To that extent, it is my considered view that accused entered the school unlawfully. But was it his intention to commit a crime? Throughout the trial, the accused stated that he went to the school to see a friend. This supposed friend was never known, save the averment of the accused that he went there to see his friend, no further evidence was led in respect of who this friend is, that is whether or not he even works at the school and neither was this friend also called as a witness. This makes the story of the accused person doubtful. What is clear from the

evidence is that at the time the accused person was entering the premises of the school he was not holding the fans as testified by PW2, PW3 and PW4. However, when he came out of the building, he had the two fans with him. Below is what PW2 stated

“Accused climb (sic) the first floor of the school and shortly after that he returned with a blue polythene bag containing two ceiling fans heading to European town in Sekondi”.

PW3 also said the following:

“He climbed first floor (sic) of the school and returned later with a blue polythene bag concealed with two white ceiling fans”

The police investigator PW5 also stated that, at the time the accused was arrested, a search conducted on him revealed that he had with him a white bag that contained screws, nuts and a flat screwdriver. This tool can be seen in exhibit C which was tendered and admitted by the court without any objection. It was further the evidence of PW3 and PW4 that when the accused approached them, he was holding a white bag. It is this same bag that the investigator indicated contained the screws, nuts and screwdriver. Indeed, the accused person himself confirmed that he was holding a white bag at the time he entered the premises during his cross examination of PW4. Below is what transpired.

Q. On the day in question, did you see me entering the school to remove the ceiling fans

A. At the time we saw you, you were holding a white bag. Just a little while after we saw you coming down, we saw that there were ceiling fans in the white bag and one blue polythene bag. Part of the ceiling fans were showing in the bags. We called you severally but you did not stop. We saw two brothers approaching so we told them and they followed you and you were caught.

Q. *What you are is not true. I was holding a white bag containing the items, there was no blue bag as at the time I was entering the place.*

A. *What you have just said is not correct.*

Clearly, from the above, if the accused himself says he entered the premises holding the white bag and a search conducted later proved those items were in the bag, it can therefore be inferred that the accused entered the premises with those tools. The accused entered the premises without the fans but later resurfaced with those fans. To my mind, it was the screwdriver that was used to dismantle the fans. Having considered the evidence of the witnesses and analysed all the exhibits especially Exhibit C, it is my considered view that, at the time the accused entered the school he had the intention to commit a crime, hence the screwdriver he had on him and not just to look for a friend, I so hold.

The accused is also charged with stealing under section 124 of Act 29/60 which enacts that:

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

On a charge of stealing the prosecution has to prove, three main elements as was stated in **Ampah v The Republic [1977] 2 GLR 171**, namely:

- **Dishonesty**
- **Appropriation**
- **Property belonging to another person**

Section 120 of Act 29, stipulates that 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.

The evidence is that the accused person entered the school and further proceeded to enter the first floor. This fact is not denied by the accused person. At the time the accused was arrested he had in his possession two fans. PW1 testified that these two fans were the property of the school. Under cross-examination, she indicated that the brand name on the school's fan is the same as what the accused person was holding.

Q. So (sic) you have any proof on the items that they belong to you or anything to prove that they are taken from the school.

A. The brand name is the same on (sic) the fans

The accused denies this claim and says that the fan he was holding was given to him by his aunt. Upon a visit by the Investigator to the supposed aunt's house, the said aunt indicated that he gave the accused a fan, not fans. Besides that, the make of the fan was "Bristol" and not "Kepase" as seen on the one in the possession of the accused. On page 12 of the proceedings below is what transpired during cross-examination of PW5 by the accused person.

Q. Mr. Eshun at the time the incident happened and you took me to my mother didn't she indicate that she gave the items.

A. My Lord, that is not correct, according to the said mother Auntie Yesu, she gave Bristol ceiling fan single one two months earlier before the incident but not Kepase fans that

belong to the complainant. She then led us to her room and showed us the regulator to the police and a photograph was taken for evidential purposes.

It is to be noted that the photograph taken was tendered without objection as **Exhibit D**. In Exhibit D "Bristol" is clearly written on the regular which is different from what was found in the possession of the accused.

In the evidence of the accused, he confirms that his aunt gave him one fan. Below is his testimony.

"My name is Michael Dickson Otabil. I live at Nkotomp near Sekondi. I am a signwriter. I don't know the complainant. I went to my mother, my actual mother is dead but she took care of me. She called Auntie Yesu. She was vacating from her premises. As a result, they were removing the fans in her room. She personally gave me one of the fans. My mother went to the market to trade so I went to where the fans were kept and I took one of them to show to someone to verify whether the fans were working so I use same. It was where I passed not knowing people have been stealing from that place so I was caught and arrested that I had stolen those fans.

Having admitted that his aunt gave him one fan, he further says and also tries to justify during cross-examination why he had two fans and not one. He now says that his aunt gave him one and later when the said aunt went to the market, he went to take another one from her house without her consent. That even in itself can be considered as stealing, but that is not what is before this court.

Exhibit C is a picture of the fans that were in the possession of the accused person. The regulator as shown by the school in Exhibit B has the inscription "Kepase" which is the same as the inscription on the fan in the possession of the accused. It is not in doubt that the accused was given a fan by his supposed aunt. But as stated earlier the make is

different from that seen in the possession of the accused person, therefore what he had on him could not have been what the aunt gave him but rather the property of the school. It is my view that the accused has not raised any doubt with his defence to necessitate a ruling in his favour. In the circumstance, therefore, I conclude that the accused person entered the school unlawfully and took the two fans without the consent or permission of the school authorities and by that act he intended to deprive the owners (the school) of their use. From the foregoing, therefore, I find that the prosecution has been able to prove the guilt of the accused beyond a reasonable doubt.

In the circumstances having analyzed the facts and evidence, the court is satisfied on a consideration of the whole evidence that the accused is guilty and hereby convicts him accordingly.

MITIGATION (Accused person): I am pleading with the honourable court to forgive me, I was not aware that I was not supposed to go to the place I went. I, therefore, plead with the court for forgiveness.

COURT: Is the accused person known, Prosecutor?

PROSECUTOR: Yes

SENTENCING

I have considered the plea of mitigation, however, the accused person is not a first-time offender, he is known to the court. Section 300 of Act 30 stipulates that

“Where a person having been convicted of a criminal offence is again convicted of a criminal offence that person is liable to increased punishment which is twice the maximum imprisonment and twice the maximum fine which otherwise be inflicted.”

The accused person was charged with the offence of stealing and was convicted and sentenced to a fine of 30 penalty units or in default of the fine 3 months imprisonment on the 29th of July, 2020. The maximum fine of the district court is 500 penalty units, therefore twice this fine will be 1,000 penalty units. In the circumstance, I hereby sentence the accused person to a fine of 1,000 penalty units. In default of the fine 4 years imprisonment. Both counts to run concurrently.

(SGD)

H/W ROSEMARY EDITH HAYFORD

MAGISTRATE