

IN THE DISTRICT COURT, HELD AT GOASO ON THE 26TH JULY, 2022 BEFORE
HER WORSHIP MAGDALENE THOMPSON DISTRICT MAGISTRATE

B7/55/2021

THE REPUBLIC

VRS

CLEMENT SARFO

ACCUSED PERSON PRESENT

CHIEF INSPECTOR DANIEL TAWAIH FOR PROSECUTION PRESENT

NO LEGAL REPRESENTATION

JUDGEMENT

The accused person herein is arraigned before this honourable court charged with the following offence:

Stealing contrary to section 124(1) of the Criminal Offences Act, 1960 (Act, 29)

The accused person pleaded not guilty after the charge has been read out and explained to him and the burden was therefore placed on the prosecution to prove the guilt of the accused person beyond reasonable doubt as per *sections 11(2) and 13(1)* of the *Evidence Act, 1975, (NRCD 323)* and also as was held in the case of **ASARE V. THE REPUBLIC**

[1978] GLR 193-199, where Anin J. A. reading the Court of Appeal decision stated: “....
As a general rule, there was no burden on the accused to establish his innocence; rather it was the prosecution that was required to prove the guilt of the accused beyond all reasonable doubt. The accused is presumed innocent until his guilt is established beyond reasonable doubt; that the burden is rather on the prosecution to prove the charge against him beyond reasonable doubt...”

THE BRIEF FACTS OF THE CASE

The facts of the case as presented by the prosecution were that the complainant is an Auto Electrician and lives at Bobkroom, Goaso whereas the accused person is Car Sprayer and lives at Gyidim, Goaso. On 28th May, 2021, the complainant was at his store at Bobkroom when the accused person came and told him that he was coming to buy materials meant for spraying car. After the accused person was served with whatever he requested for, the complainant's begun to calculate the cost of the things he bought to know how much the accused person had to pay to him. Complainant in the course of calculating found one tin of Clear which was not part of the things the accused person bought and was placed in the container which has Portin, one of the things the accused person bought in it. Complainant enquired from the accused person how the tin of Clear got its way into the paint container but accused person could not give any tangible reason hence the complainant rushed to the Goaso Police Station and lodged a complaint. The accused person was subsequently arrested at the complainant's store and a paint container which has the Portin and one tin of Clear in it was identified to the Police. During investigation, it came to light that, at the time the accused person was at the complainant's store buying his things, other customers also came to buy other things from the same store. That after the complainant served the accused person and was attending to other customers; the accused person quickly stole the tin of Clear and placed it in the paint container which has his Portin in it already. After the

necessary investigation, accused person was charged with the offence and put before this Honourable court.

THE CASE OF THE PROSECUTION

In proving its case, the prosecution called two (2) witnesses including the investigator.

Two (2) of these witnesses are **PW1**-Detective Inspector Richard Nartey Djiku the investigator stationed at Goaso Police, and **PW2**-Nicholas Marfo.

PW1 told the court that on the 28th May, 2021, a case of “**stealing**” was referred to him for investigation and visited the crime scene with the complainant at Bobkrom and showed him the paint container which contains both the portin and the tin of Clear. According to **PW1** the accused took advantage to steal the tin of Clear when the complainant was busily serving his other customers. He arrested the accused person and took his investigating cautioned and charged statements. Thereafter he tendered in evidence investigation caution and charged statements without objection by the accused which were admitted and marked as exhibits ‘A’ and ‘B’ respectively.

PW2 confirmed the facts as presented by the prosecution and added that the day in question on 28th May, 2021 he was at his shop when the accused and his friend came to the shop to buy material meant for spraying a car. According to **PW2** he served the accused and his friend separately because accused bought Portin and he placed it in paint container and half container of tin of Clear. He further stated that when serving them other customers came and he pleaded with the accused and his friend to wait for sometime so that he can attends to other customers before he do their calculation of the things they have bought. He contended that after calculating their prices for them he then realized that there is another full container of Clear in the accused container where he personally placed the Portin inside. He then queried the accused how come he is

having a full container of Clear amongst his things he served him but accused could not give him any tangible answer to the query. He then reported the accused and his friend to the police at Goaso with the exhibit of full container of Clear. Prosecution then closed his case.

ACCUSED DEFENCE

According to the accused he went to the complainant's shop to buy paints and he selected those that he needed and mixed them together. According to him when he was mixing his paints some buyers came and the complainant's excuse him and went and served the other customers and later came to calculate his items that he has selected and it is there that the complainant saw a tin of clear amongst his things and queried him why that clear container is in his things as he did not serve him with that full container of clear. According to the accused a misunderstanding ensued between them and complainant told him he has stolen that tin of clear and then sent his child to call a police. Accused closed his case and did not call any witness

The legal issue that fall for determination after the end of the trial is as follows:

- i. Whether or not the accused person is guilty of the offence of stealing*

Section 124 (1) of Act 29 of 1960 provides that: *"A person who steals commits a second degree felony"*

Section 125 of Act 29 defines 'Stealing' as follows: *"A person steals if he dishonestly appropriates a thing of which he is not the owner"*.

"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 some person may be deprived of the benefit of his ownership, or of the benefit of his right or interest in the thing, or in its value or proceeds, or any part thereof”.

In his book, **CRIMINAL LAW IN GHANA**, the learned Judge, **P.K. Twumasi** at page **311** stated that: *“To amount to appropriation, it is enough if there be evidence that the accused caused others to take the thing and there was intent on the part of the accused person to deprive the owner of the benefit of his ownership or of the benefit of his right or interest in the thing”.*

In the case of **THE STATE VS. W.M.Q. HALM AND ARYEH KUMI CRIM. APP NOS. 118/67 AND 113/67, 7 AUGUST, (1969) CC155**, the court per Akufo Addo, C. J., Ollennu, Apaloo, Amissah JJ.A and Archer J stated the three essential ingredients which proves a charge of stealing under our criminal law as:

- “(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.”*

The Container of Clear was found amongst the items bought by the accused. According to the accused he picked the Tin of Clear when the complainant’s was attending to the other customers and it was his view that he will add it to his already selected items to pay for all of them

Some answers accused provided during cross-examination:

Q. It is not true that the complainant’s asked you why that Clear paint was added to your paints because he did not serve you.

A. I answered him but by then the complainant was furious.

Q. I also put it to you that you told the complainant the type and quantity of paints you want to buy?

A. Yes

Q. Did you include the Clear paint that was found amongst the paints you requested to buy?

A. No, I did not inform him about the other Clear paint I added to the already requested paints.

The above cross-examination indicates that the accused person took the Clear paint at the blind side of the complainant when the complainant was busily attending to the other customers. It has become clear and evident that the accused really stole the clear paint.

In the instant case PW1 and PW2 revealed that when the accused person was questioned by the complainant's whether he requested the Clear Paint when the complainant was serving him and his friend but the accused could not answer. In PW2 evidence he emphasized that the accused has been stealing his goods anytime he visited the shop to buy his things.

Accused person in his evidence admitted having stolen the Clear paint because his initial items selected for payment the Clear paint was not included but adduced that he had wanted to pay for it when the complainant comes to him to calculate his things had bought.

By this reason the prosecution has proved conclusively that the accused person stole the Clear paint the property of the complainant and admitted same during the cross-examination.

With the above findings of facts I rely on **LUTTERODT V. COMMISSIONER OF POLICE [1963] 2 GLR 429-440**, where Ollennu J.S.C, delivering the judgment of the Supreme Court stated that: *"If quite apart from the (accused) defendant's explanation, the*

court is satisfied on a consideration of the whole evidence that the accused is guilty, it must convict".

Upon a consideration of the totality of the evidence adduced during the trial, I am fully satisfied of the guilt of the accused person of the offence of stealing and hereby convict him.

I therefore sentence the accused person to a fine of 50 penalty units or in default three months imprisonment. I order that the retrieved container of clear be handed over to the complainant accordingly.

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H/W MAGDALENE THOMPSON

DISTRICT MAGISTRATE