

CORAM: IN THE DISTRICT COURT ASOFAN SITTING ON THE 3RD DAY OF
JULY, 2023 BEFORE H/W NANCY TEIKO SEARYOH (MRS.) – MAGISTRATE

SUIT NO: CC07/11/23

REPUBLIC

V

KWAKU KORANTENG

JUDGEMENT

INTRODUCTION:

The accused person has been charged with One Count of Stealing; contrary to **Section 124(1) of the Criminal Offences Act, 1960 (Act 29)**.

Stealing is defined in **Section 125 of the Criminal Offences Act, 1960 (Act 29)** thus:

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

Under **Article 19(2) (d) of the Constitution, 1992**, the law requires that a person charged with a criminal offence shall be informed immediately in a language he understands and in detail of the nature of the offence. Accused was arraigned before this court on 12th April, 2023. After the charges had been read in English and translated in Twi exactly as per Statement of Offence Sheet, Accused pleaded **GUILTY WITH EXPLANATION** to the charge levelled against him. After listening to his explanation the court entered a plea of **NOT GUILTY** for the accused person.

It is a fundamental rule in all criminal trials that the accused person is presumed innocent until he has pleaded guilty or has been convicted. To that end, **Article 19(2) (c) of the 1992 Constitution** of the Republic of Ghana provides that:

19. Fair Trial

1. A person charged with a criminal offence shall be given a fair hearing within a reasonable time by a court.

2. A person charged with a criminal offence shall

(c) Be presumed to be innocent until he is proved or has pleaded guilty;”

FACTS OF THE CASE AS PRESENTED BY PROSECUTION:

The facts of the case as presented by Prosecution are that Complainant is an importer resident at East Legon, Accra whilst the Accused Person is a trader resident at Asofan. Complainant has a shop at Asofan near the market of which the Accused Person is the shop attendant.

It is the case of prosecution that in October 2022, Complainant filled the shop with goods worth (GHC55, 000) fifty five thousand Ghana cedis, handed it over to the accused person and travelled to Germany. When the complainant returned to Ghana in January 2023 he detected that the goods in the shop had reduced drastically but the accused person could not account for it. The complainant took a stock of the remaining goods in the shop and realized that an amount of (GHC22, 465.00) twenty two thousand four hundred and sixty five Ghana cedis was missing from the shop. Complainant asked the accused person but he could not give any proper excuse or account for the goods so the complainant lodged a complaint at the Asofan Police Station following which the accused person was arrested. The accused person admitted the offence in his

Caution Statement to the police during investigation. After investigation he was charged with the offence and arraigned before this Honourable court.

ISSUES FOR DETERMINATION:

At the end of the trial, the legal issues that fall for determination are as follows:

(i) Whether or not Prosecution has discharged its duty of establishing a prima facie case of Stealing against the accused person.

(ii) Whether or not the accused person has a good defence to the charge preferred against him.

BURDEN OF PROOF:

The evidential burden and the burden of persuasion were thereby placed on Prosecution to prove the charge preferred against the accused person. Prosecution's duty therefore was to lead evidence satisfactorily to prove that Accused committed the offence he had been charged with. In order to establish its case, Prosecution is required by law to prove its case beyond reasonable doubt in accordance with Sections **11(1) & (2) and Section 13(1) of the Evidence Act, 1975, (NRCD 323)** which stipulates that:

Burden of producing evidence defined:

11 (1) For the purposes of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party.

(2) 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 will find the existence of the facts beyond reasonable doubt."

Proof of crime

13(1) in a civil or criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt.

Reasonable doubt was explained by Denning J (as he then was), in the case of 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. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice."

EVIDENCE ADDUCED BY PROSECUTION:

Prosecution's evidence presented in proof of the offence of stealing can be gleaned from the testimonies of the complainant in this case Gideon Otoo as under-listed (PW1) and the case investigator (PW2). I shall therefore consider these testimonies.

PW1 who is the Complainant was Gideon Otoo. During trial, he testified under oath that he gave his shop at Asofan near the market filled with drinks to the tune of (GHC 30,000) Thirty thousand Ghana cedis to the Accused and one Gloria. He later added goods worth (GHC11, 000) eleven thousand to it and handed over to them. He used to visit the shop regularly until he realized they were misusing the money. Upon taking of stock he realized that the goods had reduced to GHC 14,600 fourteen thousand six hundred Ghana cedis and upon enquiry the accused told him the money was with Gloria. He asked Gloria but she could not account for it. He therefore asked her to pay for the money to which she agreed and asked for time. He stopped working with Gloria. He raised money to the tune of GHC55, 000, Fifty five thousand Ghana cedis, filled the shop and handed it over to the accused person in October 2022 and travelled to Germany. Whilst he was away the accused person called to inform him that Gloria

had brought GHC 14,000 so he asked the accused person to keep the money so they could decide on what to do with the money when he returned. He came to Ghana in January 2023 and upon his return the shop had gone down and the accused person has since not been able to account for the money. He decided to report the matter to the Police.

PW2, Detective Sergeant Ernest Donkor was the Investigator of this instant case. PW2 corroborated the testimony of PW1. Additionally he stated that he took the statements of accused as per due procedure and after investigations charged the accused person with the offence of stealing. He additionally tendered the charge statement and the investigative caution statement of the accused person who testified in this matter together with the charge sheet and brief facts.

ANALYSIS

In the case of **Adam v The Republic [1992] 2G.L.R 150 – 174** Benin J in holding eight stated that:

“Where the defense of an Accused in a criminal trial went beyond a mere denial, it became the duty of the trial court to consider it and rule on its acceptability or otherwise with reasons. And where the judge disbelieved the case of the accused, he was obliged to consider whether the accused story was reasonably probable. In the instant case prosecution witnesses have corroborated their evidence and there is no sufficient evidence on the part of A1 discrediting same.”

The accused person in this instant case is charged with one count of Stealing; contrary to Section 124(1) of the Criminal offences Act, 1960 (Act 29) which stipulates that:

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

Stealing is defined in **Section 125 of the Criminal Offences Act, 1960 (Act 29)** thus:

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

Things in respect of which stealing, etc., can be committed is explained in Section **123 of the Criminal Offences Act, 1960 (Act 29)** as follows:

S123 Subject matter of stealing

(1) Any of the crimes of stealing, fraudulent breach of trust, robbery, extortion, or defrauding by false pretence can be committed in respect of anything

(i) whether living or dead, and whether fixed to the soil or to any building or fixture, or not so fixed, and

(ii) whether the thing be a mineral or water, or gas, or electricity, or of any other nature, and

(iii) whether the value thereof be intrinsic or for the purpose of evidence, or be of value only for a particular purpose to a particular person, and

(iv) whether the value thereof do or do not amount to the value of the lowest denomination of coin;

(2) For the purpose of subsection (1) a document is of value, whether it be complete or incomplete, and whether or not it satisfied, exhausted, or cancelled.

(3) In any proceedings in respect of any of the crimes mentioned in subsection (1) it shall not be necessary to prove ownership or value.

In the case of **Mensah and Others v The Republic [1978] GLR 404-427, Taylor J.** held that:

“For the offence of stealing to be constituted, therefore the relations, act and intention to be proved in connection with ‘the thing’ are:

- (i) that the person charged must not be the owner of it;
- (ii) that he must have appropriated it; and
- (iii) that the appropriation must have been dishonest.

These are the basic ingredients requiring proof in a charge of stealing.”

In the case of **The State v W.M.O Halm and Ayeh Kumi Crim. App No. 118/67 and 113/67 7 August, 1969; (1969) CC 155**, the court per Akuffo Addo, C. J. Ollenu, Apaloo, Amissah J.J. 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”.

From the evidence before this court, it has been successfully proven by Prosecution and even admitted by accused that the shop with its contents did not belong to the accused person he was only employed by the complainant as a shop attendant. It is therefore established beyond reasonable doubt that Accused Person is not the owner of the proceeds from sale of the contents of the shop.

Next to be proven beyond reasonable doubt is that Accused appropriated the (GHC22, 465.00) Twenty two thousand four hundred and sixty five Ghana cedis he has been charged with stealing. Prosecution is supposed to prove that Accused took, obtained, carried away or dealt with the money otherwise.

Prosecution would also have to prove that Accused intended to deprive the owner of the benefit of his ownership or of the benefit of his rights or his interest in the items or in their value or proceeds or any part thereof.

PW1 testified that after he stopped working with the said Gloria he filled the shop to the tune of GHC55, 000 handed it over to the accused person and travelled to Germany. Upon his return the shop had gone down and the accused could not account for the money he put into his business by this the accused actually deprived the complainant of the benefit of his ownership. Thus during cross-examination of the complainant by the accused, when he was asked by the accused

Q:At the police station you made mention that whilst I was working with you, you gave me a place to stay and some things does it mean that if you provide these things for the employee does it stop you from paying him at the end of the month

A: I handed over the business to him to take care of the shop while I was away and made it known to him that when I return we will sit down and discuss all outstanding issues. It was when I returned that I realized that all my money had gone and there was no profit.

With this the second ingredient in the offence has therefore been proven by Prosecution.

Dishonest appropriation is defined in **Section 120(1) of the Criminal Offences Act, 1960 (Act 29)** as follows:

“An appropriation of a thing is dishonest if it is made with an 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 some person for whom he is trustee or who is owner of the thing, as the case may be, or that the appropriation would, if known to any such person, be without his consent.”

Proof of either an appropriation without claim of right or an appropriation without the consent of the owner would be sufficient evidence of dishonest appropriation.

Prosecution has been able to prove that Accused did not have any claim of right to the money and neither did he take same with Complainants' consent. In my view, this was strong evidence from which dishonesty could well be inferred, and which implicated Accused on the charge of stealing preferred against him. The Court found as a matter of law and fact that Prosecution had made a prima facie case against Accused.

The accused person is only ordered to open his defence after the prosecution has closed their case and they have been able to establish a prima-facie case against him. The accused person is then required to lead evidence to rebut the presumption of guilt raised by the case of the prosecution. In those circumstances, the burden of proof shifts to the accused person and he has to adduce sufficient evidence to avoid a ruling against him on a particular issue, as stipulated in **Section 11(1) of the Evidence Act, 1975 (N.R.C.D. 323)**. This has been well captured in the case of **Woolmington v Director of Public Prosecutions (1935) AC 462 at 481** where **H.L. Sankey L.C** stated that:

“While the prosecution must prove the guilt of the prisoner, there is no burden laid on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the jury of his innocence.”

In Section 11(2) of the Evidence Act, 1973 (NRCD 323) the law requires that in a criminal action the burden of producing evidence, when it is on the accused person as to any fact the converse of which is essential to guilt, requires the accused person to produce sufficient evidence so that on all the evidence a reasonable mind could have a reasonable doubt as to his guilt. It stipulates as follows:

(2) Except as provided in section 15 (c), in a criminal action, the burden of persuasion, when it is on the accused as to a fact the converse of which is essential to guilt, requires only that the accused raise a reasonable doubt as to guilt.

In accordance with Section 173 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30), Accused was called upon to open his defence.

In his investigative caution statement (Exhibit D), Accused stated that he is a 46 year old trader and a resident of Asofan. He narrated that he was introduced to the complainant 2 years ago by a woman called Gloria who he had known for years. He worked with Gloria who was managing the complainants shop at the time for some time. The accused person continued that the complainant handed over his shop and house under his care when he sacked Gloria due to some financial issues between them. He went on to say that during the month of October 2022 the complainant raised some money and filled the shop and travelled to Germany. Whilst the complainant was away he admitted receiving an amount of GHC14, 000 from Gloria. Upon receipt he called the complainant who instructed that he should use the money to buy goods to fill the shop. Accused person went on to say that since his inception in the employment there had not been any agreement with the complainant as to how much he was going to be paid and that the only amount he was paid in 2022 was GHC500. He further admitted that it was the business's money that he sometimes took for his daily bread and that the complainant returned in January 2023 and asked that he rendered account to him. He said he gave him the GHC14, 000 refunded by Gloria and another GHC14, 000 making GHC28, 000 and that he was still trying to retrieve money from people who owed him.

In his Charge Statement (Exhibit F), Accused relied on his investigative caution statement given on the 29th March 2023 which is exhibit 'E'.

During trial, Accused in his defence stated under oath that he had handed over the money that Gloria brought to him to the complainant when he returned and apart from that he also rendered an account of another GHC14, 000 and that after that the complainant took stock of the remaining items and said he had embezzled GHC22, 465 and that he informed the complainant that he had not embezzled the money but had

given some of the goods on credit and was waiting for payment. He also stated in paragraph 4(four) of his witness statement that the complainant did not sit down with him to calculate the total amount of items in the shop before he travelled.

This is what ensued during cross examination of the accused person by prosecution.

Q: Mr. Koranteng, in paragraph 4 of your witness statement you claim that your boss did not calculate the items in the shop with you is that so?

A: That is so

Q: will you agree with me or is it true that the complainant always gives you the receipt covering every single item bought for the shop?

A: he gives me the receipt. The business was previously being handled by another person, when I took over the complainant did not sit with me to calculate the items in the shop before he bought new ones to be added.

Q: I am putting it to you that stock was taken with you and the other worker before the shop was handed over to you alone to handle?

A: That is so

Q: Since all the receipts covering all the items bought for the shop are with you, there is no doubt that you know exactly what or the amount in the shop?

A: that is so

Q: you claimed that your boss never paid you is that correct?

A: he paid me just once and that is what I said.

Q: That is not so but he told you to keep the shop safely and after he returns from Germany he would sit down with you and know what to do with the profit, Is that not so?

A: that is so

Q: your boss gave you free furniture, accommodation, no electricity bills and an opportunity to sell sachet water with his fridge, just to keep you serving until he returns is that not correct?

A: that is so

Q: In your caution statement to the police you stated that your boss filled the shop before handing it over to you is that so?

A: That is so

Q: Can you tell this court what the exactly the amount in debt is because you claim in your statement that you have given some of the items on credit?

A: Currently I have only GHC3, 000 in debt.

The accused in his investigative caution statement made a striking confession or admitted that he sometimes took some of the company's money for his daily bread. It is evident that the accused did not seek the permission of Complainant nor did he gain his consent to use funds which belonged to Complainant eventhough he was in contact with the complainant when he was abroad. It is settled in law that a confession alone, without more, is sufficient to found a criminal conviction.

In the case of **Billa Moshie v The Republic (1977) 2 GLR 418**, Anin JA. Stated that:

“A conviction can quite properly be based entirely on the evidence of a confession by a prisoner and such evidence is sufficient as long as the trial judge, as in this case, enquired most carefully into the circumstances in which the alleged confession was made and was satisfied of its genuineness.”

By this defence of Accused, the Court is not convinced enough to doubt the evidence adduced by Prosecution. It is the opinion of the Court that Prosecution has led credible and cogent evidence to support all the ingredients of the offence charged Accused beyond reasonable doubt. The Court hereby rejects the defence of Accused as not being reasonably probable and therefore finds Accused guilty of the offence of Stealing; contrary to Section 124(1) of the Criminal Offences Act, 1960 (Act 29).

With the above findings of facts I rely on **Lutterodt v Commissioner of Police [1963] 2G.L.R 429-440, where Ollenu JSC.,** delivering the judgment of 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”.

Accused is hereby convicted.

SENTENCE:

In sentencing Accused, I have taken into consideration the fact that he is a first-time offender, his demeanour during trial, and his plea for mitigation and the fact that the money he stole has not been retrieved nor returned to its owner.

I have also taken into consideration the fact that every sentence is supposed to serve a five-fold purpose, namely to be punitive, calculated to deter others, to reform the offender, to appease the society and to be a safeguard to this country.

In accordance with Section 300(1) of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) I hereby sentence Accused to a term of six (6) months imprisonment.

H/W NANCY TEIKO SEARYOH (MRS.)

MAGISTRATE