IN THE DISTRICT COURT HELD AT ADIDOME ON FRIDAY THE 28TH DAY OF APRIL, 2023. BEFORE HER WORSHIP MOLLY PORTIA ANAFO-SALIA (MRS) DISTRICT MAGISTRATE)

CRIMINAL CASE: 7/09/2022

THE REPUBLIC

VRS.

HAMMAH MAMUDU GARIBA

PARTIES

1 . CHIEF INSPECTOR EMMANUEL DZAKU FOR THE REPUBLIC PRESENT.

2 . ACCUSED PERSON PRESENT.

J U D G M E N T

The Accused Person was arraigned and charged with the offence of Stealing Contrary to Section 124 (1) of the Criminal Offences Act, 1960 (Act 29).

The Accused Person pleaded NOT GUILTY to the offence of Stealing.

The brief facts of the case as recounted by the prosecution are that; the Complainant, Anthony Agbledzo is a farmer and residing at Mafi-Agoe. The Accused Person, Hammah Mamudu Gariba is a cattle drover and also residing at Mafi-Adanukpo. That on the 9th of April, 2022 Complainant's cattle drover, Kadili Muma informed him that two (2) of their cattle and a calf got missing in their kraal overnight. Complainant and his cattle drover searched for the missing cattle but all efforts made to get same proved abortive.

On Saturday, 23rd of April, 2022, Complainant cattle drover during his search saw the missing calf among Accused Person's kraal. Meanwhile, during the night before complainant's cattle drover detected the missing of their cattle, Accused Person's cattle was seen grazing around Complainant's kraal. Complainant after hearing that his missing calf was seen in Accused Person's kraal visited Accused Person and questioned him on where he got the said calf since it got missing with its mother.

Accused Person told the Complainant that the calf came to his village by itself and he caught it. Accused Person failed to inform anyone about the said calf and kept it in his kraal until Complainant's cattle drover saw it in his kraal. After investigation, Accused person was charged.

The plea of NOT GUILTY presumes an accused person innocent until he has pleaded guilty or his guilt has been proven as a enshrined in Article 19 (2) (C) of the Constitution of the Republic of Ghana. The same presumption of innocence was held by the Supreme Court in the case of Okeke v. The Republic (2012) 41 MLRG 53 at 61 -62 and also in the Republic v. Francis Ike Uyanwume (2013) 58 GMJ 162 at 177 that, a person charged with a Criminal offence shall be innocent until he is proved or has pleaded guilty."

The Cardinal Principle in all criminal proceedings is that the burden of establishing the guilt of the accused person is on the prosecution and the standard of proof required is proof beyond a reasonable doubt. This cardinal rule is codified in the Evidence Act, 1975 (NRCD 323) Sections 11 (2) and 13 (1).

"11 (2) states: In a criminal action the burden of producing evidence, when it is on the prosecution is to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of the fact beyond a reasonable doubt".

"13 (1): In any 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".

The prosecution in proving their case called two (2) witnesses, Anthony Agbledzo and General Constable Evans Anku. They also tendered in evidence the cautioned and charged statements of the Accused person as well as a photograph of the calf. They were admitted and marked as Exhibits 'A' 'B' and 'C' respectively.

The Accused Person opened his defence and called three (3) witnesses namely Fatimata Alhassan, Abubakari Gariba and Amadu Hamima. He also filed a photograph of the calf as his Exhibit and same marked as Exhibit '1'.

The case of Anthony Agbledzo, first Prosecution witness, PW1 was that, his cattle drover, Kadili Muma informed him of two of his cattle and calf having been missing. This happened at the same time when Accused Person's cattle were seen grazing at his kraal. That between four (4) days internal thus from 19th April, 2022 to 23rd April 2022, after a diligent search, the calf was found in the Accused Person's kraal. That when he questioned him about it, Accused Person said it came to his village by itself and he instructed his wife to keep it among his cattle in his kraal till the owner is found.

The second prosecution witness, PW2, the Investigator, General Constable Evans Anku evidence was to the effect that he conducted

investigation into the stealing case. Proffered against the Accused person. As part of his work, he visited the scene of crime retrieved the calf and a photograph taken for evidential purposes. He tendered in evidence exhibits in his possession and same admitted and marked as Exhibits 'A', 'B' and 'C' respectively.

Accused Person cross examined them and prosecution closed their case.

The Accused Person opened his defence and called three (3) witnesses and tendered in evidence a photograph of the calf.

The Accused Person in his defence stated that a strange calf strayed to his village and he had same tied by his wife for safekeeping. Later, his herdsman met the complainant's herdsman and informed him about the strange calf and they came and identified it. Accused person tendered in evidence a photograph of the calf as Exhibit '1'.

The evidence of DW1, Fatimata Alhassan was that on the 23rd of April 2023, a strange calf was found in their house and accused person instructed her to have same tied for the owner to come for it.

DW2, Abubakari Gariba stated that he was in accused person's house when a strange calf entered and accused person instructed DW1, Fatimata Alhassan accused person's wife to tie it for safekeeping whilst they look for the owner.

DW3, Amadu Haruna evidence was that he witnessed the incident when he had gone to accused person's house at Mafi-Adanukpo where they both live. There a strange calf entered and DW1 was asked to tie it for safekeeping to enable them look for the owner.

Prosecution cross examined them after their evidence.

The Legal issue that falls for determination:

(1) Whether or not the accused person stole the calf.

The accused person has been charged with the offence of Stealing Contrary to Section 124 (1) of the Criminal Offences Act, 1960 (Act 29).

Section 124 (1) provides as follows: "Whoever steals shall be guilty of a second degree felony".

Stealing is defined in the Act under Section 125 as follows: "a person steals if he dishonestly appropriates a thing of which he is not the owner".

To establish the offence of stealing we look at two main ingredients, Act us reus and mens rea. Actus reus may involve taking, moving, obtaining, carrying away or dealing with an item and mens rea is the intention to steal. Both elements must be present in the offence of stealing, very paramount.

To establish these elements, prosecution must prove three requirements:

(1) That the person charged must not be the owner of the thing allegedly stolen,

(2) That he must have appropriated the thing alleged to have been stolen, and

(3) That the appropriation must have been dishonest.

These elements were espoused in the case of Brobbey and Others v. The Republic (1982-83) GLR 608 and the case of The State v. W.M.Q. Halm and Ayeh – Kumi (Criminal Appeal) No 118/67 and 113/67, 7th August CC. 55.

In the case of Ampah v. The Republic (1976) 1 GLR 403 at page 412 held:

"If these three essential elements are proved to the satisfaction of the court, the court will be bound to convict unless the accused is able to put forward some defence or explanation which can cast a reasonable doubt on the case for the prosecution:"

I shall now look at the elements.

1. That the person charged must not be the owner of the thing allegedly stolen.

It is not necessary for the Prosecution to prove who actually owns the calf as in Section 123 (3) of Act 29:

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

Subsection (1) of Section 123 states: The criminal offence of stealing, fraudulent breach of trust, robbery, extortion or defrauding by false prefence can be committed in respect of a thing.

In spite of the above provisions, prosecution need to show or establish that the accused person is not the owner of the calf. This was the ratio in the Republic v. Halm & Anor (1969) CC 155 CA where it was held that a charge of stealing is founded not on a relationship between the person charged and an identified owner, but on the relationship between the person charged, and the thing alleged to have been stolen. Therefore, the law requires proof that the accused person was not the owner of the chattel".

The ownership of the calf, Exhibit C, never in doubt, as PW1 established ownership in his evidence. Not only that but the entire evidence adduced never put the ownership in dispute.

It is clear that the law does not require a carrying away of the calf before accused person can be convicted of the offence of stealing, the requirement is satisfied as long as it is shown that the calf has been moved from the kraal of PW1.

In Anning v. The Republic (1984-86) 2 GLR 85, it was held that since the law of Ghana did not require a "carrying away" before appropriation could be established, he was guilty of stealing". However, the mental element is very important. It must be shown that the accused person committed the offence or act with the intention that someone may be deprived of the benefit of his ownership or the benefit of his right or interest in the thing or in its value or proceeds or any part thereof. In the absence of the mental elements there can be no appropriation. This was put to rest in Antwi & Anor v. The Republic (1971) 2 GLR 412, where the court held that since the money was due him for extra work done, there was no appropriation or an intent to deprive anyone of his ownership".

In relating this to the instant case, there is evidence that the calf was found in accused person's kraal which ownership has been established. How the calf got to the accused person's kraal has not been established by prosecution, as a requirement though, it mattered not if sufficiently ownership was proved or established. The accused person rears cattle and has a kraal at Mafi-Adanukpo where he resides. His contention or defence has been that the calf strayed to his house and he had same kept well for the owner to come for it. This piece of his evidence was corroborated by DW1, DW2 and DW3. Meanwhile, the prosecution's

case has been that, the calf at a tender age of about three (3) months could not have strayed alone without its mother to accused person's house. All this accused person and his witnesses denied any knowledge in their evidence in chief and under cross

examination. The accused person did not deny or deprive PW1 of his ownership of the calf. Nowhere in the evidence in this court did the ownership of the calf was in doubt for the court to make inference and arrive at or conclude on its ownership. The evidence on record proved that, the calf was temporally in accused person's custody as depicted in Exhibit 'C' and Exhibit 'I' and tied for safe keeping alone and not seen among other cows.

In the evidence of PW1, he stated that his cattle drove, Kadili Muma informed him of the missing calf and two (2) other cows. Apparently, accused person's cattle was seen grazing at PW1's kraal.

Afterwards, he detected the missing of the animals which included the retrieved calf from accused person's house. This was after Kadili Muma had gone and found the calf in accused person's kraal after he was informed by accused person's herdsman. From this, the court can deduce that the calf followed accused person's cattle to his kraal and therefore the accused person should be held accountable for the infraction. Deprivation even it temporal, if same is established is enough to sustain the mental element in appropriation, after all under Ghanaian Law, temporary use or appropriation satisfies the requirement as long as it is accompanied by the requisite proscribe mental element but not in this case.

The next element for the prosecution to prove beyond reasonable doubt as to whether or not the accused person appropriated the calf allegedly stolen.

Under Section 122 (2) of the Criminal Offences Act, 1960 (Act 29): "An appropriation of a thing in any case to mean any moving, taking, carrying away, or dealing with a thing with intent that some person may be deprived of the benefit of its ownership, or the benefit of his right of interest in the thing or its value or proceeds of any part thereof".

The evidence of the prosecution did not state anywhere that accused person was caught directly in the act of stealing, either by any of the active verbs in section 122 (2) of Act 29. The evidence of PW1 was that his cattle drover, Kadili Muma informed him of the incident and the calf later found in accused person's kraal and this led to the arrest of the accused person.

The accused person in his Cautioned statement, Exhibit 'A' stated: "On Saturday, 23rd April, 2022 about 6.00 am I was at home together with my family when a calf came to my house. I asked my children about the calf and they did not know where it came from but they only saw it among their cattle. I told my children to tie the calf down so that when the owner comes he will pick his calf and go. I told my children that when they go out with the cattle for grazing and someone inform them about his missing calf they should tell him to come and have a look at the one in the house. Whiles they went out with the cattle for grazing, my children met Anthony's Fulani man and told him about the calf so he should come and look at it and the Fulani man went and claimed ownership. Anthony 's Fulani man told me that they lost the calf and its mother but I told him it was only the calf which came to our house in the morning. The Fulani man left and later came back with Anthony to my house and met my absence. Anthony called me on phone and I asked him to wait till I come. Anthony told me the calf got lost with

the mother. I told him to take the calf and go but Anthony refused and left". This evidence and that of the court did not conflict each other and no contradictions whatsoever.

Finally, and the third element of stealing, the issue of whether or not the appropriation was dishonest, was stated under section 120 (1) of the Criminal Offences Act, 1960 (Act 29):

It states: An appropriation of thing if:

(1) It is made with the intent to defraud; or

(2) If it is made by a person without claim of right and with knowledge or belief that, the thing; the appropriation is without the consent of a person for whom that person is a trustee or who is the owner of the thing; or

(3) That the appropriation if known to the other person, be without the consent of the said person".

Section 120 (1) of Act 29 contemplated two kinds or types of dishonest appropriation. Thus proof of either of these could constitute dishonest appropriation. Intention as stated by P.K. Twumasi in his book, Criminal Law of Ghana like any state of mind is incapable of direct proof. It is always inferred from proven facts. The intention as to whether the accused person meant to deny PW1 ownership of the calf allegedly stolen can only be inferred from the proven facts and the surrounding circumstances of the alleged crime.

Many a time, crimes are hardly committed in the full glare of the public. It is from the pieces of evidence available which the bench can deduce or infer from surrounding circumstances that the accused person indeed committed the alleged crime.

In the instant case, the undisputed facts are that PW1 and accused person rear cattle. Again that owners hip of the calf thus Exhibit 'C' and Exhibit 'I', not in contention as both Prosecution and defence evidence have established same. What the court cannot

understand is the prosecution's insistence that, the accused person stole the mother of the calf as well since the calf is too young to have strayed alone to accused person's house. This was during cross examination where accused person was subjected to questions to prove their case but the defence was resolute and denied knowledge of any crime.

The principle can very well be formulated that despite the seriousness of a crime just as happened in the instant case, if the acceptable principles and requirements on burden of proof set down by law are not satisfied and or applied as laid down in the Constitution, the Evidence Act and the decided cases, then, just like what happened in the Egbetorwokpor's case, it is better for a guilty person to walk alway free than for an innocent person to be punished or incarcerated.

The court considered the three stages set out in the case of Lutterodt v. Commissioner of Police (1963) 2 GLR 429, holding 3 to examine the case of the accused person, Holding (3): "In all criminal cases where the determination of a case depends upon facts and the court forms the opinion that a prima facie case has been made the court should proceed to examine the case for the defence in three stages:

(a) If the explanation of the defence is acceptable, then the accused should be acquitted;

(b)If the explanation of the accused is not acceptable but is reasonable probable the accused should be acquitted;

(c)If quite apart from the defence is explanation, the court is satisfied on a consideration of the whole evidence that accused is guilty, it must convict".

A statute creating an offence must determine its ingredients and same must be proved by prosecution. To established the offence of stealing as defined by Section 125 of Act 29, the prosecution was required to prove the following three elements:

(i) Dishonesty

(ii) Appropriation

(iii) Property belonging to another.

Similarly, the Law is settled that the essential elements of the offence of stealing are three and for prosecution to succeed, they must prove all the ingredients namely, dishonesty, appropriation and the thing belonging to another person."

See: Osei Kuradwo II v. The Republic [2007-2008]

2 SC GLR 1148

Ampah v. The Republic [1977] 2 GLR 171

Baah v. The Republic [1991] GLR 483

The court having considered the evidence adduced by the prosecution and accused person has come to the conclusion that none of the elements stated above could not be established by prosecution to secure a conviction.

The Law is that the Prosecution must prove all the ingredients of the offence charged by accordance with the standard burden of proof the case of The Republic v. Francis Ike Uyannoune (2013) 58 GMJ 162, CA.

In the prevailing circumstances, the court finds as a fact that prosecution has not been able to discharge the standard burden of proof to prove the guilt of the accused person: It is trite that,

Our system of criminal justice is predicated on the principle of the prosecution proving the facts in issue against an accused person beyond all reasonable doubt. This has been held in several cases to mean that, whenever any doubt exists in the mind of the court which has the potential to result in a substantial miscarriage of justice, these doubts must be resolved in favour of the accused person.

On the strength of the statute and case laws cited above and the prosecution having been unable to link the accused person to the office of stealing contrary to Section 124 (1) of the Criminal Offences Act, 1960 (Act 29) as charged, I hereby find accused person NOT GUILTY and accordingly he is acquitted and discharged.

(SGD)

H/W MOLLY PORTIA ANAFO-SALIA (MRS)

DISTRICT MAGISTRATE

IN THE DISTRICT COURT HELD AT ADIDOME ON FRIDAY THE 28TH DAY OF APRIL, 2023. BEFORE HER WORSHIP MOLLY PORTIA ANAFO-SALIA (MRS) DISTRICT MAGISTRATE

CRIMINAL CASE NO: 4/03/2022

THE REPUBLIC

VRS.

AGORDO VIDA

PARTIES

1 . ACCUSED PERSON PRESENT.

2 . CHIEF INSPECTOR EMMANUEL DZAKU FOR THE REPUBLIC PRESENT.

J U D G M E N T

The Accused Person was arraigned in this court and charged with the offence of Assault Contrary to Section 84 of the Criminal Offences Act, 1960 (Act 29).

The Accused Person pleaded NOT GUILTY and thereafter was admitted to bail.

The brief facts of the case are that the complainant is a farmer and a Pastor. Accused person is also a farmer. They both live close to each other at Mafi-Tsrinyikope. On 24th March, 2022 at about 18.45 hours, the Complainant, who rears goats, in his house went and drove his goats into his pen after grazing. The Accused person who was then sitting close to Complainant's pen confronted him as to why he drove her goats in addition to his into the pen. The Complainant then requested that the Accused person come and see if her goats were in

his pen but she declined. As the Complainant went back in search of the rest of his goats, the Accused Person went and opened the pen and all the goats went out. As a result, Complainant's four goats worth GH₵1,600.00 got missing till now. The Complainant who was not comfortable with Accused Person's action went to her to find out why she opened the animals. She became offended and slapped the Complainant. She attempted slapping the Complainant again but he managed to block it by holding her hand. The Complainant reported a case of assault at the Police station and Police Medical Form was issued to him to seek medical care. Accused person also lodged a complaint against the Complainant and was also issued with a medical form. They returned same duly endorsed by a medical doctor. After investigations, the accused person was charged and arraigned in court.

It is trite learning that in all criminal cases, the prosecution has to prove the essential elements of the offence or offences with which the accused person has been charged beyond reasonable doubt. The burden of proof remains on the prosecution throughout the trial and it is only after a prima facie case has been established that the accused person will be called upon to open his defence.

Statute and case laws have placed the criminal burden of proof in criminal cases on the prosecution. The Evidence Act, 1975 (NRCD 323) Sections 11 (2) and 13 (1) formulates this proposition

Section 11 (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 could find the existence of the fact beyond a reasonable doubt".

Section 13 (1): "In any 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".

In the case of COP v. Antwi (1961) 1 GLR 408, the Supreme Court put the burden in this way in holding one (1) as follows:

"The fundamental principles underlying the rule of law are that the burden of proof remains throughout on the prosecution and the evidential burden shifts to the accused only if at the end of the case for the prosecution an explanation of circumstances peculiarly within the knowledge of the accused is called for. The accused is not required to prove anything, if he can merely raise a reasonable doubt as to his guilt, he must be acquitted".

The doubt is expected to be what is beyond reasonable doubt. It is not easy to determine what constitute reasonable doubt. In the case of Oteng v. The State (1966) GLR 352 at 355, the Supreme Court ruled that: "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".

In a bid to secure the conviction of the accused person therefore, the Prosecution called four (4) witnesses and tendered in evidence all Exhibits in their possession. They included the cautioned statement of the accused person, cautioned statement of the complainant charged statement, Medical Reports of accused person and Complainant, photographs of accused person and Complainant goats pen. All were admitted and marked as Exhibits 'A', 'B', 'C', 'D', 'E', 'F' and G respectively.

The Accused person opened her defence but did not call any witness and no Exhibit(s) also tendered. The first prosecution witness (PW1) Dika Philip stated in his evidence that on the 25th day of March, 2022 he drove his goats into his pen and detected four (4) of the goats were not his. He left them out and closed the gate. Whilst, he went in search of his remaining goats, he met the accused person also in search of her goats and directed her to check same from his pen but accused person declined. He closed the gate and left. On his arrival, the pen gate was opened and all the goats came out. That he approached the accused person and demanded to know why she opened the gate but it resulted in open confrontation between them. Accused person insulted him as a bad man and one who told her husband to twist her neck and for that matter, she would deal with him and carried it out with a slap. She wanted to slap PW1 again but he held her hand. This was in the presence of Innocent Dika and Dominic Dika, PW1's nephew and son respectively who held him from the scene.

The second Prosecution Witness (PW2), Dika Innocent in whose presence accused person allegedly committed the offence, stated in his evidence that on the fateful day, he was sitting in front of his room and saw PW1 drove his goats into the pen.

Afterwards, PW1 was seen dragging out four (4) goats in ropes from the pen. There he heard accused person asked PW1 about the closure of his pen because her goats were in his pen. That PW1 stood by his gate and asked accused person to check for her goats in the pen but she refused. PW1 then left the entrance in search of some of his goats and returned with all his goats outside. The accused person had opened his pen and made or allowed his goats come out. PW1 called

accused person's daughter Delight Honu now deceased to see what her mother had done and just as PW1 was walking to Delight accused person started insulting PW1. Before PW1 could find out the essence of accused person's action, she slapped him. The accused person in an attempt to slap PW1 the second time, PW1 held her hand to prevent any further slap, Dika Dominic, Delight Honu and himself separated them.

The third Prosecution Witness (PW3) Dika Dominic stated that he heard some noise from the father's (PW1) pen and went there. He found out that PW1 was talking to Delight Honu and also heard accused person insult PW1 as a madman. This made PW1 approach her on why the insults but rather it resulted in exchange of words and accused person slapped PW1. In an attempt to slap him again, PW1 held her hand and they rushed to the scene, himself Dika Innocent and Delight Honu held PW1 and he left the place to his house.

The fourth Prosecution witness PW4, the investigator G/L/CPI. Ebenezer Amartey Nartey evidence was that on the 24th of March, 2022, a case of assault was referred to him for investigations. He issued medical form for the victim and accused person for treatment. That they returned the forms duly endorsed by a medical officer. Further, he obtained investigation cautioned statements from the two as well as their witnesses. There was a visit to the scene of crime and photographs taken for evidential purposes as depicted in Exhibits 'F' and 'G'. Accused person was charged after his senior officers instructed him. PW1 then tendered in evidence the Exhibits filed during disclosures.

The accused person cross examined all the witnesses and prosecution closed their case.

In accused person's defence, she stated that on the 24th of March 2022 at about 18.00 hours she was with her late daughter, Delight Honu infront of their house facing the pen of PW1 when she saw PW1 drove four of her goats together with his into the pen. She followed PW1 and as she was almost at his pen he closed same and remained in the pen. That she stood closed to the pen with maize to attract her goats from PW1's pen but he closed the pen and her four goats could not come out.

According to the accused person, she pleaded with PW1 to allow her goats come out but PW1 rather came out of the pen and refused to open for her to get her goats out. He came and fetched maize for the goats in the pen and closed it. Again, she asked him to open for her goats to come out and he retorted that accused should enter the pen and get her goats out. She then opened the pen and her goats came out but she did not enter there. She followed her goats to close PW1's pen and it resulted in a verbal confrontation. That complainant threatened when he got close to her, held her right hand and twisted it in her own house. She shouted for assistance and her daughter, Delight now deceased came to her rescue together with PW2 and PW3.

Is Accused Person guilty of the offence charged?

The Prosecution charged the Accused Person with the offence of Assault Contrary to Section 84 of the Criminal Offences Act, 1960 (Act 29).

It states: "whoever unlawfully assaults any person is guilty of a misdemeanour"

Section 85 of Act 29 mentions the different kinds of assault as follows:

(1) Assault includes

(a) Assault and battery

(b) Assault without actual battery and

(c) Imprisonment.

The definition of Assault given in Section 86 of the Criminal Offences Act, 1960 (Act 29) is that: "A person makes an Assault and battery upon another person, if without the other person's consent, and with the intention of causing harm, pain or fear, or annoyance to the other person, or of exciting him to anger that person forcibly touches him".

The definition is subject to the following provisions: -

(a) **Where the consent of the other person to be forcibly touched has been obtained by deceit, it suffices with respect to intention that the touch is intended to be such as to cause harm or pain, or is intended to be such as, but for the consent obtained by the deceit, would have been likely to cause fear or annoyance or to excite anger;**

(b)where the other person is insensible, unconscious or in same, or is, by reason of infancy or any other circumstance, unable to give or refuse consent, it suffices with respect to intention, either that the touch is intended to cause harm or pain, fear or annoyance to him or that the touch is intended to such as would be likely to cause harm pain, fear or annoyance to him, or to excite his anger, if he were able to give or refuse consent, and were not consenting;

(c)any slightest actual touch suffices for an assault and battery, if the intention is an intention as is required by this section;

(d) a person is touched within the meaning of this section, if his body is touched, or if any clothes or, any other thing in contact with

his body or with the clothes on the body are or is touched although the body is not actually touched; and

(e)for the purposes of this section, with respect to intention to cause harm, pain, fear, or annoyance it is immaterial whether the intention is to cause the harm, pain, fear or annoyance by the force or manner of the touch itself or to forcibly expose the person, or cause him to be exposed to harm pain, fear or annoyance from any other cause".

Assault in law is putting another person in fear of unlawful harm, ie without his consent.

From the facts presented by the prosecution, the charge of assault against the accused person is that of Assault and Battery.

Section 86 (1) of Act 29 defines Assault and Battery as follows:

"A person who without the consent of another person and with the intention of causing harm, pain or fear, or annoyance to the person or exciting the person to anger or that person forcibly touches the other person commits an assault and battery".

The least touch of a person in anger to cause pain, harm, fear, or annoyance to that person or of exciting the other person to anger that person forcibly touches the person amounts to assault and battery.

To constitute assault and battery, it is sufficient if the prosecution is able to establish that without the consent of the other person and with the intention of causing harm, pain or fear or annoyance to the other person or exciting him to anger, the accused forcibly touched him or caused any person, to forcibly touch him.

In order to ground a conviction, the prosecution would have to prove beyond reasonable doubt that:

1. **the accused person forcibly touched the complainant;**
2. **the touch by the accused person was without the consent of the complainant;**
3. **the touch was intentional; and**
4. **the touch was unlawful.**

The court in determining the issue had to consider whether or not the accused person touched PW1.

PW1 in his evidence in chief stated that, the accused person slapped him after he went to ask her why she left his pen gate open and made all his goats come out of the pen. That indeed it became confrontational and accused person slapped him and wanted to slap again, so he held her hand. This piece of evidence was corroborated by PW2, Dika Innocent and he added that, he, PW3 Dika Dominic and accused person's deceased daughter, Honu Delight witnessed the incident and had to rush to the scene to separate them.

The accused person in her evidence in court denied slapping PW1, rather it was PW1 who held her hand and twisted same. Meanwhile, in her statement to the Police, Exhibit 'A' it stated. "As I was struggling to set my hand free, I hit his face but was not intentional."

The undenied facts are that, the accused person's goats entered PW1's pen. This happened under the full glare of accused person. She complained to PW1 and the pen opened for her to come for her goats but she refused to enter. Later she went to get her goats from PW1's pen and in incidentally all the goats came out including PW1's goats. This happened in his absence and upon his return, he went to

accused person to find out why she opened the pen gate and made all his goats come out. This became an issue and the alleged offence was occasioned or committed.

From the evidence adduced, thus prosecution and accused person, there is an inference that the parties have not been on good terms despite the fact that, they are neighbours. If not, PW1, PW2 and PW3 who were at the scene could have assisted to get the accused person's four goats into her pen. Be that as it may, the unexpected happened and accused person was arraigned to court.

Granted without admitting that the accused person as stated in her cautioned statement that she struggled to get her hand freed from PW1 and it hit PW1's face unintentionally. How could that happen and why was it termed unintentional. After all, there was a confrontation and you all flared up and you were bound to retaliate. That could have constituted another offence but that was not it. Accused person cannot convince this court that she did not slap PW1. During cross examination she made the court aware that, her short height could not commensurate with the tall height of PW1 and for that matter it was not possible to have slapped PW1. Yet as she struggled to get her hand off the grips of PW1, her hand hit the face of PW1 and it was not intentional. Accused person's hanky – panky story cannot exonerate her. The touch on PW1's face was intended to cause harm, pain, fear or annoyance which eventually made him attend hospital for medical care.

I want to consider Exhibit 'D' the medical report of PW1, duly endorsed by Dr. Richard Tumawu of Adidome Government Hospital, Adidome, Volta Region. The findings on examination were that, PW1 was conscious, not in any obvious respiratory distress but had

tenderness in the right cheek. A case of Cephalagia secondary to an alleged Assault.

From the report there is evidence of assault and battery; tenderness in the right check. A case of Cephalagia which is a symptom that refers to any type of pain located in the head.

From the evidence, PW1 never consented to the offence of assault. PW1 though stated, he had to go and find out why accused person opened the gate for all his goats to come out after he personally secured the gate but he never consented to the offence. As was in the case of Comfort & Anor v. The Republic (1974) 2 GLR 1, where the first appellant in an attempt to exorcise an evil spirit from the complainant subjected her to some beatings. It was held that there was consent and therefore the offence of assault had not been committed. This was not the case.

Intention to cause harm, pain or fear, or annoyance to PW1 or exciting him to anger is another element that must be proved by the prosecution.

The learned author P.K. Twumasi in his book Criminal Law in Ghana stated at page 77 as follows:

"The general principle of our law is that intention like many other states of mind is capable of direct proof. It is always inferred from proven facts. This is a principle of English Common Law which has been accepted as an important principle of our Criminal Law".

Assault can never be lawful and especially under this circumstance. It is therefore unlawful and cannot be justified under Part Two of

Chapter One. An assault is therefore unlawful unless it can be justified within the limits specified by the Act, Section 85 (2).

From the foregoing, the court can conclude that accused person assaulted PW1 Exhibit 'D' is clear that PW1 suffered alleged assault.

The court considered the three stages set out in the case of Lufferodt v. Commissioner of Police [1963] 2 GLR 429 at holding 3 to examine the case of the accused person.

"Holding 3 in all criminal cases where the determination of a case depends upon facts and it forms the opinion that a prima facie case has been made, the court should proceed to examine the case for the defence in three stages:

(a) If the explanation of the defence is acceptable, then the accused should be acquitted;

(b)If the explanation of the defence is not acceptable but reasonably probable, the accused should be acquitted;

(c) If quite apart from the defence's explanation, the court is satisfied on a consideration of this whole evidence that accused is guilty, it must convict".

A statute creating an offence must determine its ingredients and same must be proved by prosecution.

To establish the offence of assault as define in section 86 (1)

of Act 29, the prosecution was required to prove the following four elements:

1. **accused person forcibly touched PW1;**
2. **the touch was without the consent of PW1;**

3. the touch or assault on PW1 was intentional;

4. the touch or assault on PW1 was unlawful

This same mandate of the prosecution to prove the essential ingredients of assault was enunciated in the case of Faulkner v. Tolhot [1981] 3 ALL ER. 440 CA, Lane CJ held as follows:

"An assault is an intentional touching of another person without consent of that person and without Lawful exercise. It need not necessarily be hostile or made, or aggressive, as some of the cases seem to indicate".

The principle can very well be formulated that despite the seriousness of a crime just as happened in the instant case, if the acceptable principles and requirement on burden of proof set down by law are not satisfied and or applied as laid down, then it is better for the accused person to walk out free but not in this case where prosecution have been able to prove the guilt of the accused person beyond a reasonable. Therefore, I find as a fact that the accused person committed the offence proffered against her as prosecution was able to link her to the offence of Assault.

In the English case of Miller v. Minister of Pensions [1947] 2 ALL ER 372, Denning J (as he then was) stated at page 373 to 374 that".....if the evidence is so strong against a man as to leave only a remote possibility, but not the least probable the case is proved beyond reasonable".

On the strength of Miller v. Minister of Pensions supra,

Accused Person is GUILTY and accordingly convicted.

MITIGATION

Accused Person pleaded for leniency.

SENTENCE

The court considered accused person's plea, age, a breadwinner a single mother and not known, accused person is cautioned and discharged.

The accused person also attended hospital for medical care. Report tendered as Exhibit 'E'. In view of that both parties should bear their medical expenses.

In addition, accused person will sign a bond to be of good behaviour for three (3) month and in default six (6) months imprisonment.

(SGD)

H/W MOLLY PORTIA ANAFO-SALIA (MRS)

(DISTRICT MAGISTRATE)

28TH APRIL, 2023

IN THE DISTRICT MAGISTRATE COURT HELD AT ADIDOME ON WEDNESDAY THE 3RD DAY OF AUGUST, 2022 BEFORE HER WORSHIP MOLLY PORTIA ANAFO-SALIA (MRS) (DISTRICT MAGISTRATE)

CC: 14/02/2022

THE REPUBLIC

VRS.

SOLOMON HENYO

ACCUSED PERSON PRESENT.

CHIEF INSPECTOR EMMANUEL DZAKU FOR THE REPUBLIC PRESENT.

J U D G M E N T

The Accused Person was arraigned in this Court and charged with the offence of Careless and Inconsiderate Driving Contrary to Section 3 of the Road Traffic Act, 2008 (Act 761).

The Accused Person pleaded NOT GUILTY and was admitted to bail thereafter.

The brief facts as recounted by Prosecution are as follows, the Accused Person is a driver and a resident of Akatsi. On the 21st of September, 2009 at about 7: 00am, he was in charge of his Toyota Hiace mini bus with Registration No.GR 9815-09 loaded with eleven (11) passengers from Akatsi to Mafi-Kumase market.

On reaching a section of the road near Mafi-Kumase new market, a motor tricycle which was in front of him and was also ridden

by Wonder Hodotor was branching to the new market. However, accused person failed to observe the road carefully before overtaking the said motor tricycle with Registration No. M-20-GR 4509. In the process, accused person crushed his vehicle into the rear portion of the said motor tricycle which resulted in an accident. As a result, one Mawunyefia Aheto who was on board the motor tricycle fell off the motor tricycle and sustained serious injuries and was rushed to Adidome District Hospital for treatment. He was later referred to St. Anthony Hospital at Dzodze for further treatment. Due to the seriousness of the injuries sustained by the victim Mawunyefia Aheto, his right little

or pinky finger was amputated. Victim stayed on admission for four months before he was discharged from the hospital.

Accused person reported at the Police station and he was re-arrested and cautioned to that effect. After investigation, accused person was charged with the offence and arraigned in court.

The plea of NOT GUILTY presumes an Accused Person innocent until his guilt has been proven or has pleaded guilty as enshrined in Article 19 (2) (c) of the 1992 Constitution of the Republic of Ghana. The same presumption of innocence was held by the Supreme Court in the case Okeke v. The Republic [2012] 41 MLRG 53 at 61-62:

"That a person charged with a criminal offence shall be innocent until he is proven or has pleaded guilty."

See also The Republic v. Francis Ike Uyanwume [2013]58 GMJ 162 at 177.

The general rule therefore is that throughout a criminal trial, the burden of proving the guilt of the Accused Person remains on the Prosecution. See: Anane v. The Republic [2017] 109 GMJ SC.

The standard of proof required in criminal cases is proof beyond a reasonable doubt and the Evidence Act, 1975 (NRCD 323) formulates this proposition in Sections 11 (2) and 13 (1).

"Section 11 (2): "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 the fact beyond a reasonable doubt".

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

Generally, an accused person is not required by law to prove anything. He is only to raise a reasonable doubt in the mind of the court as to the commission of the offence to secure acquittal.

See: Woolmington v. D.P.P. [1935] AC 462, COP v. Antwi [1961] GLR 408 and Bruce Konua v. The Republic [1962] GLR 611.

The Prosecution assumed the burden to prove the guilt of the accused person to secure his conviction, filed three (3) witness statements in
accordance with the Practice Procedure in Criminal Prosecution. They equally tendered in evidence some Exhibits. This included the caution and charge statements of the accused person, the sketch of scene of accident, medical report form and report for the victim, Driver and Vehicle Licensing Authority (DVLA) report on vehicle No. GE 9815-09 and motor tricycle No. M-20-GR 4509, Driver's License of accused person, Road Worthy Certificate for accused person's vehicle no.GE 9815-09 and Insurance Certificate, Medical Receipts from St. Anthony

Hospital for Mawunyefia Aheto and other receipts, they were admitted and marked as Exhibit A, B, C, D, E, F, G, H, J, K, KI – K10 respectively. The accused person opened his defence and filed three (3) witness statements and a sketch of the scene as Exhibit 'I'.

The accused person was charged with the Offence of Careless and Inconsiderate Driving, Contrary to Section 3 of the Road Traffic Act, 2004 (Act 683) as amended by Road Traffic Act, 2008 (Act 761).

The Accused Person alleged that on the 21st of October, 2020 that on reaching Mafi-Mediage junction a tricycle just came from Mafi-Mediage and entered the main road all of a sudden. That he slowed down and swerved to the left side of the road with the horn on to caution those on board the tricycle. That upon reaching the new market junction at Mafi-Kumase, this same tricycle suddenly crossed his vehicle again without any sign, he had no option than to run into the tricycle resulting in the accident.

The issue to determine is whether or not Accused person carelessly and inconsiderately drove his vehicle so as to cause the accident between him and PW1.

The offence known Careless and Inconsiderate Driving is occasioned when the driver in charge of a motor vehicle drivers in such a way that he or she fails to exercise due care and attention for the safety of other road users. Indeed, when a driver causes inconvenience to other road users owing to his to exercise due care and attention or to exercise reasonable consideration for other road users or motorists. This offence has been stipulated in Act 683: Section 3: Careless and Inconsiderate Driving.

"A person who drives a motor vehicle on a road without due care and attention, without reasonable consideration for other persons using the road commits an offence and is liable to a fine not exceeding two hundred penalty units or term of imprisonment not exceeding forty months or both."

In criminal Law, the basic principle is that for an act to be deemed an offence, it must be clearly stipulated as prohibited. Article 19 (5) of the 1992 Constitution states this principle:

"(5) A person shall not be charged with or held to be guilty of a criminal offence which is founded on an act of omission that did not at the time it took place constitute an offence."

The act which has been committed must be accompanied by a culpable state of mind. In this sense, the intent of the Accused is very much importance to establishing that a crime has indeed been committed. Although the Accused has been said or stated to have run into the motor tricycle and drove inconsiderately and carelessly so as to endanger the lives of other motorists, in the event that an accident has occurred, the question remains that what was his intent at the time of his actions?

The Accused admitted that he intended to go to the new market at Mafi-Kumase as a commercial area with passengers on board his mini bus. At Mafi-Mediage, the motor tricycle entered the main road and he had to swerve to the left to avoid any accident. Unfortunately, at the new market of Mafi-Kumase, this same tricycle crossed him and he run into him as he had no option. So was it Accused person's intention to commit such a crime?

Section 11 (1) of the Criminal Offences Act, 1960 (Act 29) states as follows: "(1) where a person does an act for the purpose of causing or contributing to cause an event, that person intends to cause that event, within the meaning of this Act, although in fact or in the belief of that person or both in fact and also in that belief, the act is unlikely to cause or to contribute to cause the event".

Thus, accused person's intention was to drive safely to the market with his passengers and their wares on board his commercial vehicle which would take him to his desired destination, he ignored road etiquette or useful signs indicated that one limits speed when driving in town. As stated in the Contemporary Criminal Law in Ghana at page 606 by Dennis Dominic Adjei: "A person in control of a motor vehicle is to conform to speed limits provided for under regulation 161 except in a situation where the Road Authority provides otherwise. The maximum permissible speed at which a motor vehicle may be driven on a road within a school, a playground, a health facility, a church, a mosque, a market, a shopping centre or where there is procession or where human activity is predominant is thirty kilometers per hour. See Regulation 161 (a).

PW1, Wonder Hodotor who was in charge of the motor tricycle was heading towards the market at Mafi-Kumase with four bags of charcoal loaded in the tricycle with PW2 and PW3 Mawunyefia Aheto and Keteku Light on board.

That as he got to the junction of the main Mafi-Kumase road at Bakpa, he stopped and watched both sides of the main road with no vehicle coming before he joined the main road towards the market. That he rode for some long distance before branching to the market where

a vehicle on top speed all of a sudden came and hit the back of his motor tricycle which resulted in the accident. This evidence was corroborated by PW2 who had hired the motor tricycle to convey the bags of charcoal and was on board. That they sustained serious injuries as a result of the accident. PW2 eventually had his little right finger amputated having been hospitalized at Adidome Government Hospital and St. Anthony's Hospital, Dzodze. This is evident in Exhibit 'K', 'KI' - 'K10'.

The court agrees that accidents do happen. Sometimes it is genuinely a mishap on either both of the parties involved. However, where the Law is concerned, there must be thorough investigations into the cause of the accident and whether there were any Laws breached. It is unacceptable that accidents occur to endanger the lives of other citizens as a result of one party ignoring the Laws put in place to avoid such accidents in the first place.

The accused person in his caution statement to the Police on the 21st of September, 2020 thus Exhibit 'A' stated that, he was in charge a Toyota Hiace with Registration No. GE 9815-09 and on reaching a fuel filling station at Mafi-Kumase new market, he was behind a tricycle, he showed his trifigator and wanted to overtake the motor tricycle. Suddenly the tricycle rider also crossed to the other lane and he couldn't do anything to safe the situation and he run into the tricycle resulting in the accident.

From this narration, the accused person was behind the motor tricycle meaning they were both in the same lane before he showed the trifigator indicating his desire to overtake the tricycle but the tricycle suddenly crossed to the other side and the accident occurred because

he had to run into him for obvious reasons. Meanwhile, in his evidence on oath in court, nowhere did he state that he was driving behind the tricycle. Rather, it was during cross examination that he tried very hard to convince the court how a single lane became a double lane where both of them were plying. In all the three instances, thus Exhibit 'A', his caution statement, witness statement and under cross examination there were inconsistencies, and no matter how hard he tried to explain he breached the laws further. One thing that was obvious was his admission that he run into the tricycle. His

witnesses, DW1, DW2, and DW3 evidence were the same as they were passengers on board accused person's vehicle and viewed the incident the same.

Hunorkpa Mathias, Akos Awusavi and Ami Serwaah all stated in their statements that, they were from Aflao to Mafi-Kumase on that fateful day. And on reaching Mafi-Mediage junction a tricycle just came from Mafi-Mediage and joined the main road at once. Their driver slowed down and swerved to the left lane. Now, that upon reaching the new market junction at Mafi-Kumase, the same tricycle suddenly crossed their vehicle, again without indicating any sign and their driver had no option than to run into the tricycle leading to the accident. This evidence was a corroboration of that of accused person's evidence in court. The common thread that run through is the fact that, the accused person run into the tricycle resulting in the accident.

The Accused person made frantic effort to avoid the accident but the unexpected happened as stated in the evidence. The evidence clearly indicate that the accused person has been plying that route as he drives a commercial vehicle with passengers from Aflao to Mafi-Kumase on market days. He should also be aware of speed limits within that jurisdiction.

A reasonable and prudent speed conditions to be observed by a driver of a motor vehicle include taking into consideration environmental conditions regardless of the speed limits provided under regulations 163 and 164, driving safe when approaching and crossing an intersection and other special hazards.

The Exhibits tendered as Exhibit 'E' and 'F' thus the report of Technical Engineer, Ibrahim Ibn Musah from the DVLA depicts the extent of damage caused due to the accident. That windscreen smashed, front panel buckled and radiator grill wrecked, nearside head lamp and indicator lights broken, front bumper wrecked that is accused

person's vehicle. Exhibit 'F' the motor tricycle also had its bucket, buckled though both the motor vehicle and tricycle were in good condition prior to the accident. From the Exhibits, the accused person's vehicle was badly damaged and its shows the impact. Clearly, the vehicle was speeding and not within the speed limits prescribed by regulation 161 to have resulted in such damage.

The Prosecution in proving their case tendered in evidence Exhibit 'C' which is the sketch map of the scene of the accident. It gives the direction of the parties' vehicle and tricycle, where the accident occurred and the point of impact of the accident with its dimensions.

Granted without admitting that, the motor tricycle indeed crossed the accused person's vehicle, but with the required speed limits and considering the environment with a further reduction of speed, the resultant effect of damage would have been less or nothing at all and with no injury or injuries as occurred with PW2 losing his right little finger.

Clearly, the fact that the motor tricycle crossed accused person's vehicle resulting in the accident as he could not prevent the accident but to run in him, cannot be a good defence and cannot absolve him from liability. He drove without due care and attention or without reasonable consideration for other road users including PW1 and PW2 thereby committing the offence charged thus Careless and Inconsiderate Driving. Accused person sighting the motor tricycle the second time should have exercised caution as he did in the first instance when the motor tricycle as he alleged entered or joined the main road at Mafi-Mediage without observing traffic rules. Rather, he failed and run into him.

Section 11 (3) of Act 29 posits as follows:

"(3) A person who does an act of a kind or in a manner, that, if reasonable caution and observation had been used, it would appear to that person

(a) that the act would probably cause or contribute to cause an event, or

(b) that, there would be great risk of the act causing or contributing to cause an event, intends, for the purposes of this section to cause that event until it is shown that that person believed that the act would probably not cause or contribute to cause the event, or that there was not an intention to cause or contribute to it.

The foregoing section states that when a person commits an act and fails to attend such an action with reasonable caution and observation, then the outcome of that action is intended by that person unless the

person has something to show that he did not intend to cause the event.

In the instant case, the accused person failed to drive within prescribed speed limits of 30 kilometers per hour in market places as stated in regulation 161 especially when he sighted the motor tricycle with PW1 and PW2 on board did not exercise due care and attention for other road users and run into them, then the attendant consequences were intended, such as an accident of the nature that occurred. The accused person in his failure to exercise reasonable caution and observation endangered the lives of others.

The law is settled that in all criminal cases, the prosecution must prove the guilt of the Accused person beyond reasonable doubt. This is a distinctive feature of criminal cases

and it is different from civil cases as stated in Oteng v. The Republic [1966] GLR 323 at 345.

The new thinking has been for the Courts in the Country to look at doing substantial justice and especially in criminal cases such as this which the outcome may be consequential to the Accused person but the injured PW2, Mawunyefia Aheto and as the victim since September, 2020 equally awaits justice.

Accused person's action has been linked to the offence of careless and inconsiderate driving contrary to Section 3 of the Road Traffic Act, 2008, (Act 761). Accordingly, accused person is found GUILTY and he is hereby CONVICTED.

MITIGATION

Accused person pleaded for leniency.

SENTENCE

The court considered Accused person's plea in mitigation, age and as a first offender, the accused person is sentenced to a fine of hundred 100 penalty units in default six (6) months imprisonment.

Accused person in addition shall settle the hospital bills of the victim, Mawunyefia Aheto with an amount of Three Thousand Eight Hundred and Four Ghana Cedis, forty pesewas (GH₵3,804.40) as receipts tendered.

(SGD)

H/W MOLLY PORTIA ANAFO-SALIA (MRS)

DISTRICT MAGISTRATE

IN THE DISTRICT MAGISTRATE COURT HELD AT ADIDOME ON FRIDAY THE 11TH DAY OF NOVEMBER, 2022 BEFORE HER WORSHIP MOLLY PORTIA ANAFO-SALIA (MRS) DISTRICT MAGISTRATE

CRIMINAL CASE NO:9/01/2022

THE REPUBLIC

VRS.

TSIDI DOMEY

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1 . ACCUSED PERSON PRESENT.

D/SGT NENE OMAN V. FOR THE REPUBLIC PRESENT.

J U D G M E N T

The Accused Person was arraigned in this court and charged with the offence of Causing Unlawful Damage Contrary to Section 172 of the Criminal Offences Act, 1960 (Act 29).

The Accused Person pleaded NOT GUILTY and was thereafter admitted to bail.

The brief facts of the case as recounted by prosecution are as follows:

The Complainant, Christiana Amekor is a trader and resides at Mepe-Aplame. Accused Person is a Private Security Personnel and residing in Accra, Teshie -Rasta. They all hail from Mepe. The Complainant has a plantain garden close to her residence at Mepe-Aplame. On 30th December, 2021 at about 7.00am, the Complainant who was in the house was informed by her children that the accused was cutting down the plantain trees together with the unmatured plantains on her land. That he rushed there and met the accused in the act.

The Complainant reported the case to Aveyime police. In the course of investigations, the Complainant assisted the police to arrest the accused person. He was cautioned and granted Police Enquiry bail. In the course of further investigations, the North Tongu District Agricultural Officer visited the scene of crime and gave GH₵1,400.00 as the extent of damage caused. After careful investigations, the accused was charged with the offence as stated on the charge sheet and arraigned in court.

The Prosecution in all criminal cases assume the onus to prove the guilt of the accused person beyond a reasonable doubt.

Proof beyond reasonable doubt has been codified by the Evidence Act, 1975 (NRCD 323) in at least three Sections, thus Sections 11 (2), 13 (1) and 22.

Section 11 (2) of the Evidence Act, 1975 (NRCD 323) states:" 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 a reasonable doubt".

Section 13 (1) of the Evidence Act, 1975 (NRCD 323) provides" In any 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".

Section 22 of the same Evidence Act, 1975 (NRCD 323) states: " In a criminal action a presumption operates against the accused as to a fact which is essential to guilt only if the existence of the basic facts that

give rise to the presumption are found or otherwise established beyond reasonable doubt, and thereupon in the same of a rebuttable presumption, the accused need only raise a reasonable doubt as to the existence of the presumed fact".

The 1992 Constitution of the Republic of Ghana, per Article 19)2) (c) presumes an accused person innocent until he has pleaded guilty or his guilt has been proven. The Supreme Court also held on the presumption of innocence in the case of Okeke v. The Republic (2012) 41 MLRG at 61-62 per Akuffo. JSC as follows:"…… the citizen

too is entitled to protection against the state and our law is that a person accused of a crime is presumed innocent until his guilt is proved beyond reasonable doubt".

The import of all these case Laws and Statutes is that, it is the prosecution's duty to prove the guilt of the accused person. The accused person is not to prove his innocence. The accused person does not need to show up his hands until the need arises or he is called to do so.

Again, it must be emphasized that the proof by the prosecution can be either direct or indirect. It is direct when for example, the accused person is caught in the act or has confessed to the commission of the crime. Thus, where an accused person was not seen committing the offence his guilt can still be proved by the inference from the surrounding circumstances that indeed the accused person committed the said offence.

The prosecution to establish the guilt of the accused person and secure his conviction, proffered the charge of Causing Unlawful Damage

Contrary to Section 172 of the Criminal Offences Act, 1960 (Act 29) against the accused person. The facts presented by the prosecution makes the accused person liable to section 172 (1) (b) as the value of the damaged plantain cost GH₵1,400.00. They called three (3) witnesses and filed their statements Christiana Amekor PW1, Johnson Akumanyi PW2 and General Constable Emmanuel Ofori PW3 and tendered in evidence some Exhibits to support their case. It included caution and charge statements of the accused person, Agricultural Extension Officer's Report and Photograph of scene of the crime. They were admitted and marked as Exhibits 'A' 'B' 'C' and 'D' respectively. The accused person also filed disclosures which included his witness statement and that of

his sole witness, Janet Dome as well as a judgment as his Exhibit and same tendered and marked as Exhibit '1'.

The issue given the facts of the case is whether or not the accused person has been proven to cause unlawful damage to PW1's plantain plantation or farm.

Sections 172 to 175 of the Criminal Offences Act, 1960 (Act 29) delivers the law concerning unlawful damage to property in Ghana.

Section 172 (1) (b) of Act 29 stipulates that:" whoever intentionally and unlawfully causes damage to any property by any means whatsoever.

(b) to a value exceeding GH₵100.00 shall be guilty of a second degree felony".

Section 174 (1) and (5) of Act 29 gives a clear view of what damage is considered unlawful: "174 (1) A person does an act or cause an event

unlawfully, within the meaning of the provisions of this Act relating to unlawful damage, where that person is liable to a civil action or proceeding, or to a fine or any other punishment under an enactment,

(a) in respect of the doing of the act causing an event, or

(b)in respect of the consequences of the act or event, or

(c)in which that person would be so liable if that person caused the event directly by a personal act.

(5) Notwithstanding anything contained in Part 1 as to mistake of law, a person shall not be liable to punishment in respect of his doing anything which in good faith, he believes that he is entitled to do."

Section 173 of Act 29 defines 'damage' as follows: For the purposes of this Act, "damage" includes not only the use of that thing, or an interference with that thing by which the thing becomes permanently or temporarily useless, or by which expense is tendered necessary in order to render the thing fit for the purposes for which it was used or maintained".

Thus, the first and mandatory duty of the prosecution is to establish all the essential ingredients of the charge leveled against the accused person as pertained in the offence of causing unlawful damage.

The prosecution's case is that the accused person has caused unlawful damage to the plantain garden of the first prosecution witness, Christiana Amekor, Section 172 (1) of Act 29 which creates the offence of unlawful damage required that for a person to be liable the accused person must have caused the damage intentionally and unlawfully. Each of the two words emphasized above is important and

must be established before one can be called upon to open his defence in respect of this offence. See Homenya v. The Republic [1992] 2 GLR 312.

In the instant case, the accused person in his statement to the Police thus Exhibit 'A" stated that the land in question is a family land and the name of the family is Agbeyibor. That he wanted to develop the land so ordered one Prosper to clear the land for him and he was on the land with him. The clearing of the land included the

cutting off the plantain to pave way for his building project. They were accosted and prevented by one person from Complainant's house and Johnson PW2 who threatened him and made him lodge a Complaint at Mepe Police Station. Accused person concluded that the land and the plantain are for his family. In the evidence of the accused person he emphatically denied damaging the plantain farm or garden of the first prosecution witness. The first prosecution witness, Christiana Amekor in her evidence tendered Exhibit 'D' which was the photograph of the damaged or destroyed plantain garden.

From Exhibit 'C', it is clear that there has been some damage caused to some plantain. The evidence of first and second prosecution witnesses stated clearly that the land on which the plantain farm situates, is a family land given to Johnson, Paul and Rita, the children of Christiana Amekor by their uncle Emmanuel Zege, their family head. That on the 20th of December, 2021 and around 7: 00 am, Patrick Anyame rushed to inform him, PW2 of accused acts of destruction on that land. He rushed there and saw accused person destroying the plantains and confronted accused person and without any tangible reason for accused person's action he walked away and reported him to the Mepe Police.

Assuming without admitting that the plantain farm had been damaged intentionally, the next element to consider is whether or not the damage was unlawfully caused. If the damage to the plantain farm was lawfully caused, an offence under Section 172 (1) of Act 29 does not arise as Anterkyi J (as he then was) held in Asante v. The Republic]1972] 2 GLR 197:

"Tersely, to secure conviction under Section 172 of Act 29 not only must it be proved that the damage was caused intentionally within the provisions relating to intent in

section 11 of Act 29, but also it must be proved beyond reasonable doubt that it was caused with just cause or excuse, the burden lay on the prosecution to prove conclusion the absence of any legal jurisdiction or excuse".

In Okoe v. The Republic [1979) GLR 137, wherein Okoe was convicted of causing unlawful damage contrary to Section 172 (1) (b) of Act 29 in that he entered a plot of land, which the Complainant had bought from the caretaker of the Asare stool in 1964, and with a caterpillar demolished the Complainant's half-complete building thereon. At the trial, Okoe exhibited a judgment of the Privy Council and adopted by the Ghana Supreme Court in 1961 which adjudged his family to be owners of the land in question.

He also led evidence that his family had obtained an injunction restraining the Complainant's vendor from dealing with the land and stated that in demolishing the Complainant's building he acted upon the instructions of his family. On appeal to the High Court, Taylor J (as he then was) in allowing the appeal and quashing the conviction delivered himself at 141 as follows:

"……it is clear that the act of the appellant in demolishing the building can only be punishable if it is done intentionally and unlawfully and if he did not in good faith believe that he is entitled to demolish the building. Furthermore, it seems to me the prosecution must show that the building was lawfully on the land. For if is was lawfully on the land, removing it cannot be unlawfully, it will be lawful……..in this regard one may safely say that if the act of the appellant is lawful than an essential ingredient of the Offence is missing and a conviction cannot stand".

The prosecution witnesses have consistently claimed ownership of the plantain farm and the land:

This is what ensued during cross examination with the first prosecution witness:

Q: Are you saying that you planted the plantain?

A: Yes I did.

Q: The plantain and the land are for me. You said a family land whose family land is it?

A: Zege family.

Q: How many years was the land given to you?

A: Eleven (11) years now and my children asked me to plant the plantain.

Q: Was there a litigation on the same land in this court?

A: Yes there was.

Q: What the verdict?

A: That my children should continue with the development on the land.

Q: Are you saying the judgment was given in your favour?

A: Yes, the Court order was for the continuation of the building.

Q: So if the judgment proves otherwise, have you not deceived the court?

A: What is in the judgment is what I am alluding to.

Q: Are you educated?

A: No.

Q: So have you had someone to read same to you?

A: Yes.

Q: Where your children have commenced building is that the same place that I was cleaning?

A: Yes.

Q: You are not being truthful, because the judgment did not say so

A: I am being truthful.

The accused person prayed and sought leave of the court and tendered in evidence, the judgment through PW1 and same admitted and marked as Exhibit '1'. The prosecution at this moment tendered same as Exhibit 'E'

The second prosecution witness was also cross examined as follows:

Q: Are you aware that the land you talking about has been litigated on in this court?

A: Yes.

Q: Who were the Plaintiffs?

A: Your sisters.

Q: Could you mention their names?

A: Ame Dome is the only one I know by name.

Q: Melenusemo Dome and Adzo Dome not what you said?

A: If you say so, I cannot argue. I know the 1st Plaintiff but the 2nd Plaintiff I do not know her.

Q: Who gave the plantain farm land to you?

A: Emmanuel Zege

Q: Do you know those you share boundaries with?

A: I don't know. The Zege man shared it between myself and my siblings and accused person and his siblings

Q: Was I present when Emmanuel Zege showed you the land?

A: Yes.

Q: Who else was there?

A: Your brother called Holy?

Q: I put it to you that one boundary is by Eweglah, another by Dunyo, Holy Dome and Demkpo river, do you know?

A: I don't know.

Q: Did you ask the boundary owners when your uncle Zege gave the land to you?

A: He shared it amongst us and you.

Q: The plantain farm you claim is for you is for my aunty Melenusemo Dome?

A: It is not true. You refused to take where the plantain portion because you said it was muddy and took a different place, so my mother and my sister planted the plantain.

Q: You are not truthful no land was shared?

A: It was shared and you were present.

Q: So apart from the plantain, what other crops have you planted?

A: It is only the plantain.

Q: I am putting it to you that coconut trees were also planted?

A: The coconut was planted after the civil judgment.

Q: Who had judgment?

A: It was in our favour.

Q: Were you a party to the civil suit?

A: Yes, I was.

Q: Do you have a copy of the judgment?

A: Yes, I do.

Q: Have you read it?

A: Yes, I have

Q: Do you remember that you were asked to pay for where you were putting up your building in the judgment

A: Yes, and I paid.

Q: Do you remember you were to pay so you could continue with the building?

A: That is not true.

Q: I rely on the judgment that the plantain is for my aunty as well as the land?

A: It is not true.

The evidence of the investigator, PW3 stated that as part of his investigation, he visited the scene of crime with both parties at Mepe Aplame. It was established that the

plantain farm was fifty metres away from the complainant and where his witness resides. After which he charged the accused person.

The deduction here is that Exhibit 'E' and 'I' which is the judgment of the subject matter was not made part of prosecution's disclosures. This puts some doubt and cast a slur on prosecution for failure to file full disclosures.

During investigations, prosecution could had probed further on acquisition of the land and how prosecution witnesses became owners of the plantain farm which destruction has occasioned this infraction.

Be that as it may, how can judgment creditors or victors be made to pay money to continue with the development on the land which they had commenced. Again, if Emmanuel Zege shared the land between them and the accused person's siblings why did PW2, Johnson Akumani who was a party to the suit paid money in the form of compensation to the Plaintiff who apparently were accused person's family with DW1 Janet Domey as Lawful Attorney of the 1st Plaintiff Melenusemwo Domey, now deceased. These are questions that beg for answers.

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The accused person's sole witness, DW1 Janet Domey evidence was to the effect that, she was aware of the concerns of the plantain farm on the land which she was a party to the litigation and judgment given in their favour, (Domey family). This was a corroboration of the accused person's evidence. That the plantain was planted long ago by her mother Madam Melenusemwo Dome and they have been harvesting the plantain since time immemorial. She concluded affirming that the plantain farm belongs to her family and the Dome family. They both relied heavily on the judgment, thus Exhibit '1" to support their case.

During cross-examination by the prosecution, they insisted that they had judgment and could not have caused damage to their own property.

The Exhibit 'I' and 'E' thus the judgment explicitly stated who was the owner before the consequential orders. Emmanuel Zege, the head of family of PW1 and PW2 could not be considered as a credible grantor, and rather judgment entered in favour of the Domey family who were the Plaintiffs. There was an order for DW2 and Rita to settle an amount of Three Thousand Ghana Cedis (GH₵3,000.00) as compensation to the Plaintiffs and to continue their project which they had commenced.

Further, it restrained Emmanuel Zege not to grant or interfere with Plaintiffs immediate family land any longer or any more.

PW3 and the parties visit to the scene of crime established that the land on which the plantain farm situate was fifty metres away from their residence. It is therefore established that per the judgment the plantain farm was not part of the area ear marked for the Defendants who are PW1 and PW2 to complete their building project. Since the

judgment did not state all that area in its orders same cannot be part of prosecution witnesses case.

The accused person's Exhibit '1' with a statement laying claim to the plantain farm on the land in question and in his inspection of the locus, the investigator saw and established the distance of the plantain farm ought to have realized that such rival claims to the land cannot be resolved in a criminal trial. The proper direction was to institute a civil action to claim that land which same has been determined in 2017.

From the evidence, I want to point out that prosecution for unlawful damage under section 172 (1) of Act 29 presupposes that the complainant is the owner of the damaged plantain and the land which has been unlawfully entered. So all that the prosecution need to prove is that the accused person damaged the plantain farm intentionally and unlawfully that is without any legal justification and excuse.

The task of the court in a criminal trial under Section172 (1) of Act 29 is not to embark upon the determination of the ownership of the plantain farm as between the Complainant and the accused person. Thus as soon as the prosecution realize from the investigation into the complaint that the trial is bound to be a camouflaged civil trial into the ownership of the plantain farm as between the Complainant and the accused, it has a duty to advise the complainant to pursue that matter by a civil suit.

In Homenya v. The Republic (1992) 2 GLR 305 where the appellant had been convicted of the offence intentionally and unlawfully causing damage to the property of the first prosecution witness, Acquah J (as he then was) had this to say: "Thus at the close of the prosecution's case there was no evidence to establish that the trees were on the land

of the first prosecution witness who did not know the boundary demarcated and the first prosecution witness who did not know the boundary of the appellant's land, did not bother to find the respective limits of the parties' land so as to assist the court in resolving the rival claims to the land. There was thus no evidence to establish that the trees were lawfully at the place where they were cut down.

An essential ingredient of the offence was thus missing and the trial Judge was therefore bound to acquit and discharge the appellant at the close of the prosecution's case".

Similarly, in Asante v. The Republic [1972] 2 GLR 177, the prosecution failing to establish that the damage to the Police Officer's inform was intentionally and unlawfully caused could not secure a conviction of the accused person".

The accused person's claim per Exhibit '1' to the ownership of the land on which the plantain farm was raised is bound to negative the unlawfulness of his conduct. As it is, the prosecution presented no evidence and called no witness to establish that the plantain farm was lawfully raised.

It is therefore, the court's opinion that the prosecution has failed to establish that the action of the accused person on his bona fide property per Exhibit '1' was unlawful.

From the foregoing, I find as a fact that the prosecution failed to discharge the burden of proof that lay on them to establish the essential ingredients in the offence charged as unlawful having caused damage to PW1's plantain farm.

The law is very clear in all criminal cases that the prosecution must prove the guilt of the accused person beyond reasonable doubt. This is

a distinctive feature of criminal cases and it is different from civil cases, where one can win on a balance of probabilities.

This was the view of the Supreme Court in the case of Oteng v. The State [1966] GLR 323 at 354, that:

"One significant aspect in which our criminal Law differs from our civil law is that while in civil law a Plaintiff may win on a balance of probabilities in a criminal case the prosecution cannot obtain a conviction upon mere probabilities.

His Lordship Victor Dotse JSC in Richard Banousin v. The Republic dated 18th March 2014, Criminal Appeal No. J3/2/2014 formulated the rule beyond reasonable doubt thus.

"An accused in a criminal trial or action is presumed to be innocent until the Contrary is proved, and in case of reasonable doubt, he is entitled to a verdict of not guilty".

In the circumstance, and flowing from the case laws and statutes cited the accused person is not guilty of the offence of Causing Unlawful Damage Contrary to Section 172 (1) of the Criminal Offences Act, 1960 (Act 29).

Accordingly, he is acquitted and discharged.

(SGD)

H/W MOLLY PORTIA ANAFO-SALIA (MRS)

(DISTRICT MAGISTRATE)

8TH NOVEMBER, 2022

IN THE DISTRICT COURT HELD AT ADIDOME ON TUESDAY THE 4TH DAY OF APRIL, 2023. BEFORE HER WORSHIHP PORTIA MOLLY ANAFO-SALIA (MRS) DISTRICT MAGISTRATE

SUIT NO.A5/01/2022

CAROLINE WUGAH OF MAFI-NUKPORTE.....PLAINTIFF

VERSUS

ATSUNORVI DZAH OF MAFI-NUKPORTE.....DEFENDANT

PARTIES.

PLAINTIFF PRESENT.

DEFENDANT PRESENT.

J U D G M E N T

The Plaintiff instituted this action against the Defendant for the following reliefs: (A)Twenty Thousand Ghana Cedis (GH₵20,000.00) General Damages for defamation of character (slander) published of and concerning the Plaintiff herein at Mafi-Nukporte from the 16th day of May, 2022 to 31st day of May, 2022 at a public place and to the hearing of the general public in Ewe Language to wit: "Ashiawo, woha edzivi deka deka; Ewu mordzi koe wo nor gborwo dem le; abe alesi wonor Nanawo ha gbor de m le wumordzi hafi wodzi woe ne; Miega nye fiafitor wo le mafe Funkor fomea me" In English: "You are a prostitute, it is different men who fathered your children men have been having illicit and amorous sexual intercourse with you on the street, likewise your biological mother who had been having illicit and amorous sexual intercourse on the street

through which you were born you are also rogues from the Funkor family (B) An order of the Honourable Court compelling the Defendant to renounce the derogatory remarks complained of on one of the FM.

Radio Stations within the district and as to be directed by the Honourable Court. (C)An order of Perpetual Injunction restraining the Defendant herein, her Agents, Workmen, Assigns, Privies etc from further maligning the Plaintiff with such words in the near future.

(D) Legal and Punitive Costs.

The Defendant pleaded NOT LIABLE to all reliefs of Plaintiff.

The Plaintiff filed her statement of claim with the relevant paragraphs as follows:

1. The Plaintiff says that somewhere on the 16th day of May, 2022, some children went to pluck mangoes from Mr. Humphrey Funkor's house and whilst on their way home, Plaintiff saw them and remarked in Ewe Language to wit; -Miele eme wo woe o, gake mie be yewoa dui; which words when interpreted into English Language means: - "You were not part of the planting but you when it is time for harvest, you want to benefit from it"

2. The Plaintiff asseverates that, even though what she uttered was not directed at the Defendant, she at that material time retorted in Ewe Language to wit: "Ashiawo wo ha edzivi deka deka, Ewu mordzi koe wonor gborwo dem le abe alesi wonoa Nanawo ha gbor dem le wumordzi havi wodzi woeene; Miega nye fiafitor wo le mia fe Funkor fomea me"; which words when interpreted into English Language means: - "You are a prostitute; it is different men who fathered your children; men have been having illicit and amorous sexual intercourse with you on the street; likewise, our biological mother who had been having illicit and amorous sexual intercourse on the street through which you were born; you are also rogues from the Funkor family."

3.The Plaintiff further asseverates that, to remedy the situation, she summoned the Defendant before Torgbe Ayitey Duame II, the Dufia of Mafi-Dadoboe for an arbitration to be held over the issue. On the scheduled date, Defendant duly honoured the chief's call and when the question was put to her she voluntary admitted having uttered the said derogatory remarks against the Plaintiff. The panel of arbitrators then said, since she came alone,

Defendant needed a guardian who should advise her in the entire proceedings, and for that matter, the case was adjourned to another date.

4.The Plaintiff avers that, on the returned date when the Defendant appeared before the elders, she retorted that she did not recognized the Torgbe as a Chief who can deliberate on her matter. All earlier strenuous efforts made to enable the Defendant subdue herself to the elders for the amicable settlement of the matter proved futile. Based on that the elders asked Plaintiff to seek redress elsewhere since the Defendant was not cooperating with them as she became very saucy.

5. The Plaintiff reiterates that, from the 16th May to the 31st day of May, 2022, anywhere the Defendant set her eyes on her, she has been repeating the derogatory remarks being complained of against her.
6. The Plaintiff further stresses that, the Defendant is bent on maligning her wherever she set eyes on her, unless she is debarred from doing by an Order of a Court of competent jurisdiction like this one, she would not do so on her own.
7. The Plaintiff stresses that the derogatory remarks being complained of are unfounded as such defamed her character, tarnished her reputation, humiliated her and also exposed her to public ridicule, and as a result, she is now being treated with contempt.

The Defendant denied liability of the Plaintiff's claim and filed her Statement of Defence and counterclaim, relevant paragraphs as follows:

1.The Defendant says that the Plaintiff is her niece and they all live on the same compound with their houses facing each other.

2.The Defendant says they had been in excellent relationship until of late when Defendant got into a relationship with one Seth Saba aka Attormy and prepares meals for him

3.The Defendant says this Attormy is the caretaker of Plaintiff and Defendant's aunt's guest house which is directly opposite Plaintiff and Defendant's compound at Nukporte, separated by the Mafi-Kumase to Mafi-Asiekpe Motor Road.

4.In further reply to paragraph 5 Defendant says on the day in question 16th day of May, 2022, she as usual sent food to Attorney

at the guest house and as soon as she came out Plaintiff started her insinuations, thus time such as lazy woman whose only stock in trade is flagging her womanhood before men, I will make sure Attormy is dismissed by our aunt.

5.The Defendant says at this juncture she confronted Plaintiff and they were involved in serious quarreling during which Plaintiff insulted her in the Ewe Language to wit: "Abe dada abe vi, dawo nye hotelitor ahanomunortor, avor ha menor esi o, eyata esi woku ha wometsor avordeke da de efe ad aka dzi o" which words when interpreted into the English Language means: "Like mother like daughter, your mother was a prostitute a drunkard who had no cloth and that was why when she died there was no cloth put on her coffin as custom demands".

6. The Defendant says all these words were authored against her by Plaintiff in glare view of the general public and in the presence of a witness in this case.

7. Paragraph 6 is partially admitted. In further answer thereof defendant says about a week after their quarreling she received an invitation from Togbe Ayitey Duame II of Mafi-Daboboe.

8. Defendant says she promptly answered Togbe's call in the company of Attorny.

9. The defendant says when they got to Togbe, he informed them that Plaintiff has brought a complaint not a summon against her and urged her to attend a meeting fixed so as to forster good relationship with Plaintiff.

10.In conclusion, defendant says Plaintiff and herself quarreling on the 16th day of May, 2022 at Mafi-Nukporte and in the cause of which they said many unprintable things against each other and were very lucky not to have been arrested by the Police and charged for disturbing the public peace.

11.Wherefore, defendant says plaintiff is not entitled to any of the reliefs sought or at all.

Or in the Alternative Defendant Counterclaims against Plaintiff Defendant repeat paragraphs 1 to 28 of her Statement of Defence and Counterclaims against Plaintiff as follows:

a) GH₵20,000.00 (Twenty Thousand Ghana Cedis) General Damages for defamation of character (slander) published of concerning the Defendant herein at Mafi-Nukporte on the 16th day of May, 2022 as contained in paragraph 9 of Statement of Defence supra at a public place and to the hearing of the general public.

b) Order of the Honourable Court compelling the Plaintiff to renounce the derogatory words authored against Defendant on the 16th day of May, 2022 at a public place at Mafi-Nukporte on the Local Announcement Center at Mafi-Nukporte twice daily for three (3) consecutive days.

c) Perpetual Injunction restraining the Plaintiff herein, Her Agents, Workmen, Assigns, Privies, Servants, from maligning Defendant with such words now and forever.

d) Punitive costs to the Defendant herein.

e) Any other relief(s) found due by the Honourable Court.

In the instant suit, Plaintiff is seeking reliefs for defamation which are damages and a consequent injunction to restrain Defendant from further defaming her.

It is the Plaintiff's case that she met some children plucking mangoes from a nearby house and admonished them in Ewe "miele eme wo woe o, gake miebe yewo adui" literately interpreted as; "You were not part of the planting but when it is time for the harvest you want to benefit from it" "This statement Defendant heard and through was directed at her, also stated in Ewe that: "Ashiawo woha edzivi deka deka; Ewu mordzi koe wo nor na gborwo dem le abe alesi wonor na norwo ha gbor dem le wumordzi hafi wodzi wo ene, mega nye fiafitorwo wo le miafe Funkor fomea me". This Plaintiff stated that it was a direct response to her earlier statement to those children and same were abusive and defamed her in the eyes of the public to wit: "You are a prostitute, you gave birth to children for different men who fathered your children, men have been having illicit and amorous sexual intercourse with you by the road side likewise your biological mother who had engaged in the same act through which she gave birth to you, you are also thieves in the Funkor family." That with these words uttered by Defendant, it has defamed her in the full glare of many and to her distress and disgrace in the Mafi-Nukporte vicinity where she resides as a married woman.

According to the Plaintiff she summoned Defendant before Togbe Ayitey Duame II of Dadoboe. That Defendant honoured the invitation and admitted her fault but

used some unsavory words against the chief and his elders. As a result, the matter could not be resolved.

Further Defendant uttered those same defamatory words anytime they met, hence her resolve to have same determined.

The plaintiff called three (3) witnesses namely, Esor Esinam, Korbla Funkor and Togbe Ayitey Duame II but did not file any Exhibit.

After their evidence, Defendant cross-examined them.

The Defendant stated in her evidence that, she got into a relationship with one Seth Sabah, a caretaker at a Guest House and this created enmity between she and the Plaintiff. As a result, any least opportunity, Plaintiff will cast insinuations without the mention of her name, prior to the 16th of May, 2022 incident.

According to Defendant, on the 16th day of May, 2022 she sent food to Seth Sabah and just as she stepped out of the guest house, Plaintiff started insulting and saying in Ewe: nyornu deradeke maworla, etsor wo do wor aflag le nutsu wo tsomee, Makporgor be mia Tasi nu a Attormy le efe amedzo Dzefe godogodo words when interpreted: Lazy woman whose stock in trade is flagging her womanhood before men, I will make sure Attormy is dismissed by our aunt as caretaker of her guest house" This as she stated led to a confrontation and eventually it resulted in a quarrel and they exchanged words. During that, Plaintiff said a lot of things such as: "Abe dada abe vi dawo nye hotelitor, avor ha menor esi o ahanomunortor, eyata esi woku ha wometsor dade efe adaka dzi o abe alesi wole dekornu nu ene Therese meaning: Like mother like daughter, your mother was a prostitute, a drunkard who had no clothes and that was why when she died there was no clothes put on her coffin as custom demands."

Eventually, the matter was sent to Togbe Ayitey Duame II for settlement but same could not be resolved.

Defendant called a witness, Mama Dzah but did not file any Exhibit.
Plaintiff cross examined them after their evidence: From these facts, the issues to be determined are:

(i)Whether or not the Defendant made defamatory statements about the Plaintiff

(ii)Whether or not the Defendant is entitled to her counterclaim
(iii)Whether or not the Plaintiff is entitled to her claims.
It is worthy of note that the parties herein are related. An out of court settlement was granted in accordance with section 72 of the Courts Act, 1993 (Act 459) but the parties were not amenable.
The standard of proof in all civil cases and defamation not an exception is unambiguously stated in the Evidence Act, 1975 (NRCD 323) to be proof on the preponderance of probabilities, Sections 11 (4) and 12 formulates this proposition.
"11 (4). In other circumstances the burden of producing evidence required a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence".
"12 (1): Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities".
"12 (2): "Preponderance of the probabilities" means that degree of certainty of belief in the mind of the tribunal of fact or the court by which it is convinced that the existence of a fact is more probable than its non-existence".

It is trite learning that a party who asserts the occurrence and or the existence of a state of affairs has the burden of proof on that assertion and must adduce enough evidence to avoid a ruling against him on that matter.

To begin with, Kpegah JA in Zabrama v. Segbedzi [1991] 2 GLR 221, who declared that the burden is placed on the person who makes an averment or assertion to establish same as true, thus, this burden is not discharged until this person leads both admissible and credible evidence from which the facts given can be safely inferred.

See also Continental Plastics Ltd v. IMC Industries Technik GMB H [2009] SC GLR 98 @ 307.

Similarly, in the case of Takoradi Flour Mills v. Samir Faris [2005-2006] SC GLR 882 @ 900 held, "where the court said that Plaintiff must lead sufficient evidence on a balance of probabilities which is assessed by looking at all evidence led and in whose favour such tilts. The party to whom the bulk of inter – party evidence leans is the one who deserves a favourable verdict."

In Ghana, a person is legally entitled to protect his or her reputation from being harmed with others because such although not explicitly stated in statute is granted him by customary law and the perceived English Common Law principle, although freedom of expression in the 1992 Constitution would be misconstrued by some to mean that they could blurt out anything to which could hurt a person's reputation, this is not so. Section 54 of the Courts Act, 1993 (Act 459) provides that where these is tortious dispute the applicable Law will be the person's personal Law.

Mention should be made that a person, in addition to the regime of rights enjoyed in our democratic society is entitled to a good reputation where he or she has done nothing to lead such reputation to be tarnished.

It must be noted that defamation at customary Law protects injured feelings as well as reputation. In addition, customary law does not make a distinction between slander and libel, although this is feature of the English Common Law. It should be added that customarily Law values truth as a defence but this is not always the case. One need not prove special damage to warrant the actionability of slander where the statements made are false.

There are two (2) types of Defamation, Libel and slander. Where the defamatory words are word of mouth or orally published, it is known

as slander. On the other hand, where the defamatory words are written it is referred to as Libel.

An action of defamation will not succeed unless there is commutation of defamatory matter to a third person. Nothing is defamation if it is said to the claimant only without a third party.

For an action in defamation, to be successful, the Plaintiff has to prove certain elements.

1. **The statement must be capable of a defamatory meaning**
2. **The statement must be actually defamatory**
3. **The statement must make reference to the Plaintiff.**
4. **The statement be published.**

1.The statement must be capable of a defamatory meaning:

This is determined by four principle tests.

(a) Baron Parke in Parmiter v. Coupland, and Another (1840) 6 M & W 108, 151 ER 340 asserted that a false publication without justification or lawful excuse, calculated to injure the reputation of another by exposing him to hatred, ridicule or contempt constituted a defamatory meaning.

(b)In Youssoupoff v. Metro Goldwyn – Mayer Pictures, Ltd. (1934) 50 T.L.R. 581; Bryne v. Deane (1937) 1 KB 818; and Vilters v. Monstey (1769) 2 Wils. KB 403 95 ER – 886, it was collectively determined that words are defamatory which may cause others to avoid or shun a person or bring the person disfavor.

(c)In Tournier v. National Provincial and Union Bank of England (1924) 1 KB 461 and Jones and Another (1916) 2 AC 481 words which tend to injure the Plaintiff in his office, profession, business or trade are defamatory.

(d)Lord Atkin in Sim v. Stretch (1936) 2 ALL ER 1237 said that words are defamatory which tend to lower a person in the estimation of right thinking members of the society generally.

2. The statement must be actually defamatory.

The words must be construed in their fair and natural meaning as reasonable ordinary people will understand it except when an innuendo is pleaded. An innuendo is a defamatory imputation whereby extrinsic facts known to the reader or listener, import into the words some secondary meaning in addition to or alteration of their ordinary meaning. The statement must also be interpreted in context. This view was taken from Cassidy v. Daily Mirror Newspaper Limited (1929) 2 KB 331. Kate Anthony v. University of Cape Coast (1973) 1 GLR 299; and Grabb v. Bristol United Press Ltd (1962) EWCA Civ JO 321 -1.

3.The statement must make reference to the Plaintiff.

In Knuppfer v. London Express Newspaper Ltd. (1944) UKHL 1 (03 April 1944); Lefanu v. Malcolmson (1948) IHLC 637 and Browne v. D.C Thompson & Co (1912) SC 359, this does not mean the Plaintiff's name must be specifically mentioned but there should be evidence connecting the Plaintiff to the statement. If the statement is made to a class of people, the Plaintiff must show that the words were directed to him as an individual. He may do this by relying on an innuendo.

In Newstead v. London Express Newspaper Ltd (1940)1 KB 377 and Morgan v. Odhams Press Ltd (1971) 1 WLR 1239, it is immaterial that the maker of the statement did not intend to refer to the Plaintiff because it is what the people think of the words that matter.

4.The statement must be published.

In Pullman v. W. Hill & Co. Ltd (1891) 1 QB 524, it means making the defamatory matter known to some other person than the person at whom it is written or said. In addition, the position of the court in Theakor v. Richardson (1962) 1 WLR 151 was that a defendant will be held to have published

statement which he intends a third party to know or which he should have foreseen might come to the third party's attention.

The case of Slipper v. British Broad Casting Corporation (1991) 1 QB 283 CA establishes that each repetition of the defamatory statement is a fresh publication which gives the Plaintiff a cause of action.

From these elements, the court now proceeds to determine the issues.

(1)Whether or not the defendant made defamatory statements about the plaintiff.

The plaintiff led evidence to show that she was called a prostitute and had her three (3) children with different men. Again, that her mother was abused sexually on the road and out of which she was born. Further, that the Funkor family are rogues. All of which held no basis but harmed her reputation in the eyes of those in the vicinity. The

evidence of PW1, Ezor Esinam corroborated that of the plaintiff. That she heard the Defendant utter those defamatory words when she was out to sell her porridge in front of the guest house. Customers who had come to patronize her porridge and others who were seated in front of the guest house all witnessed what transpired. In her witness statement, paragraph 9 she stated the exact words used to be: Ashiawo, woha edzivi deka deka, Ewu mordzi koe wo norna gborwo dem le abe alesi wonor nawo ha gbor dem le wumordzi hafi wodzi wo ene, miega nye fiafitorwo wo le miafe Funkor fomea me". Meaning "You are a prostitute, you gave birth to children for different men and it is only on the road side that they have been having sex with you like they have done to your mother before she gave birth to you and you are also thieves in the Funkor family". Meanwhile, all this while, she told the Plaintiff not to utter a word after she heard Plaintiff never caused the occurrence of the event. PW2 and PW3 never witnessed the incident though but they were informed PW3. Togbe Ayitey Duame II whose palace the Plaintiff

summoned the Defendant could not resolve the matter as a result of Defendant's attitude. The defendant made no plea as to whether she made an innuendo so the court cannot say that such statements were

innuendos. In addition, it has not been shown or proved that these were said in the heat of an argument, As same cannot be considered a defamation. Ghanaian courts have taken the view in Bonsu v. Forson (1962) 1 GLR 139 that abusive words and

false personal attacks spoken in the heat of an argument do not constitute defamation.

In the Defendant's evidence in court, she could not convince the court that these statements were made in the heat of argument. She led no evidence on that score.

That when Plaintiff insulted with those words

that "lazy woman whose stock in trade is flagging her womanhood before men. I will make sure Attormy is dismissed by our aunt as caretaker of her guest house"

That we bitterly quarreled and exchanged a lot of unprintable words to each other".

"Like mother like daughter your mother was a prostitute a drunkard who had no cloth and that was why when she died there was no cloth put on her coffin as custom demands". "That we were lucky not to have been arrested and punished for disturbing the public peace"

From this, Defendant never uttered a word in the form of insults yet she stated that, they quarreled and exchanged a lot of words to each other. The question is what were your words of insult to the Plaintiff? as defendant claim they exchanged a lot of unprintable words to each other. Nowhere in defendant's evidence did she state so, and how can this be an infraction, when you did not insult Plaintiff. DW1, Mama Dzah also stated that: "lazy woman whose stock in trade is flagging her womanhood before men" was the insults from Plaintiff which she cautioned Plaintiff but plaintiff ignored her. Rather Defendant left the house and the quarrel ended. DW1 also did not state the Defendant's insults to Plaintiff, yet that they quarreled and she witnessed same.

The Defendant and her sole witness evidence could not convince the court that indeed those abusive words were not meant for the Plaintiff. The Defendant in her

evidence in chief was very clear in her mind and was never intimidated. She was quick-witted and had an

extraordinary agile mind, surprisingly she could not state or adduce evidence contrary to what the Plaintiff has stated.

There is no doubt that there has been bad blood between the parties as a result of the relationship between Defendant and the guest

house caretaker, Seth Sabbah alias Attormy but Defendant should be candid to state well to the court, the unprintable words issued against the Plaintiff in the heat of the confrontation. Certainly, it wasn't only one person in the confrontation or quarrel if indeed, it happened.

Defendant has been so economical with the truth. The court is therefore inclined to believe that Defendant really uttered those abusive words against the Plaintiff.

For this, the court finds that defendant indeed made statements that are defamatory to the person of the Plaintiff and such were published without cause.

2.Whether or not the Defendant is entitled to her counterclaim

The Defendant in the present action, filed a counterclaim and by extension becomes a plaintiff as a counter-claimant. This was clearly stated by Rose Owusu JSC (as she then was) in Sasu Bamfo v. Sintim [2012] 1 SC GLR 136 at 156 that "A counterclaim is a different action in which the Defendant as a counterclaimant is the plaintiff and the Plaintiff in the action becomes a Defendant."

In the instant case, where both parties were seeking general damages, perpetual injunction in respect of words uttered as derogatory which defamed them, each of them have the burden of proof and persuasion to prove conclusively, on a balance of probabilities that each was entitled to the reliefs claimed.

Thus, Section 11 (1) of the Evidence Act, 1975 (NRCD 323) enjoins the Defendant in its capacity as Plaintiff in a counterclaim to introduce sufficient evidence to avoid a ruling on the issue against her.

The Defendant stated that the Plaintiff without any provocation uttered those defamatory words against her that: "Lazy woman
whose stock in trade is flagging her womanhood before men, I will make sure Attormy is dismissed by our aunt as a caretaker of her guest house".

This resulted in a serious confrontation. Plaintiff continued and said again that: "Like mother like daughter your mother was a prostitute, a drunkard who had no cloth and that was why when she died there was no cloth put on her coffin as custom demands." This was said in public before a lot of people yet only Mama Dzah was the only one who testified as being present when Plaintiff uttered those derogatory words. In her evidence, it was the second words of defamation that Plaintiff uttered, indicating Defendant's mother as a prostitute and one who upon her death, cloth was not laid on her coffin as the tradition. Defendant again had stated that the words were uttered in an argument but could not state what exactly were her words to the Plaintiff if indeed unprintable words were uttered then she should have stated her version of those words.
Surprisingly, DW1 Mama Dzah could not state the words uttered by the Defendant but she claimed she had to admonish the Defendant and she stopped but the Plaintiff continued. A one sided argument in the court's opinion, as such, the Defendant has not been able to discharge the burden as a counter-claimant.

From what has been discussed above, it shows that the plaintiff is entitled to her claim and should be entitled to judgment.

On the issue of damages for slander, Justice Apaloo affirming judgment in favour of the Plaintiff in Wakyiwaa v. Wereduwaa (1963)
1 GLR 312 stated: "In this country, where words of abuse are taken seriously, it would in my opinion, be socially intolerable if customary law provided no sanctions against a man who finds pleasure in injuring the feelings of his neighbour by vituperation. Abuse by itself is a wrong redressible by damages according to customary law."
Again, in the case of Odifie v. Panin and Others (1964) GLR 317 -322, it was held that:

"(1) the principle that at customary Law an action for slander lies at the instance of the person slandered is well established, but the customary remedy of recanting is absolute. However, the principle being established can be developed by Judicial Process and accordingly the Courts can now make an award of adequate damages.
(2) The quantum of damages awardable should have some relation to the seriousness or otherwise of the injury and to the extent of the damage done. In this connection there is no difference between damages awardable in a common law action for slander and those awardable to customary Law. In all cases of assessment of damages, the question should be left to the discretion or the good sense of the court after proof of damages."
In conclusion and in view of all the foregoing findings;
i) the Plaintiff was able to lead sufficient evidence to discharge the burden of proof that the abusive words uttered by the Defendant were defamatory and made in the presence of a third party or persons and lowered her person in the estimation of right thinking people in their vicinity, Mafi-Nukporte.

ii) The Defendant was unable to lead sufficient evidence to establish that those words were in the cause of a heated argument. Her counterclaim deserves dismissal and same dismissed.

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In the circumstance, I enter judgment in favour of the Plaintiff on the balance of probabilities.

ORDERS

1. **The Defendant to settle in plaintiff's favour on amount of Twenty Thousand Ghana Cedis (GH₵20,000.00) being damages for defaming her. This should be done on or before the 4th of July, 2023.**
2. **The Defendant is also restrained from defaming the plaintiff with such words which will ridicule, defame her in the vicinity**
3. **I award costs of Two Thousand Ghana Cedis (GH₵2,000.00) against the Defendant.**

(SGD)

H/W MOLLY PORTIA ANAFO-SALIA (MRS)

DISTRICT MAGISTRATE

4TH APRIL, 2023

IN THE DISTRICT MAGISTRATE COURT HELD AT ADIDOME ON THRUSDAY THE 28TH DAY OF JULY, 2022. BEFORE HER WORSHIP MOLLY PORTIA ANAFO-SALIA (MRS) DISTRICT MAGISTRATE

Time: **CC:7/08/2022**

THE REPUBLIC

VRS.

ROBERT DORGBETOR

ACCUSED PERSON PRESENT.

DETECTIVE NENE OMAN V. FOR THE REPUBLIC

J U D G M E N T

The Accused Person was arraigned in this Court and charged with the following Offences:

1. Unlawful Entry Contrary to Section 152 of the Criminal Offences Act, 1960 Act 29, and
2. Stealing Contrary to Section 124(1) of the Criminal Offences Act, 1960 (Act 29).

The Accused Person pleaded NOT GUILTY to the two (2) Count Offence and was thereafter admitted to bail.

The brief facts as recounted by prosecution are that; Complainant, Godwin Godzo a business man and Accused Person a carpenter and all resident of Battor. That the Complainant owns a building material shop at Battor-Kekpo and closed 6: 30 pm thereabout to his house. On the same day the 8th of January 2022, at about 12:30 am, the Accused

Person who was monitoring the movement of the Complainant passed through the window and entered the complainant's shop and made away with an amount of GH₵40.00. A witness in the case spotted the Accused Person and arrested him.

He informed the Complainant and Accused Person was handed over to the Aveyime Police and a complaint lodged. In the course of investigation, Accused Person was re-arrested, cautioned and granted Police Enquirty bail to be reporting periodically. In the course of further investigations, the Accused Person admitted committing the offence. After careful investigations, the Accused person was charged with the offences as stated on the charge sheet.

With the plea of NOT GUILTY the accused Person in effect disputed the Offences proffered against him by the Prosecution and it is the duty of the Court to determine whether or not the Prosecution has succeeded in their evidence in proving beyond reasonable doubt the Offences charged.

It is trite law that the burden of proof remains on the Prosecution throughout the trial and it is only after a prima facie case has been established, that is a story sufficient enough to link the Accused person to the commission of the offences charged that Accused person would be called upon to give his side of the story.

This principle was stated in the following cases: Amantey v. The State [1984] GLR 250 at 298, Glibah and Atiso v. The Republic & [2010] 25 GMJ 1 SC and Dextor Johnson v. The Republic [2011] 33 GMJ 68.

It is also important for the court to remind itself that Article 19 (2) of the 1992 Constitution of the Republic of Ghana provides that: "A

person charged with a Criminal Offence shall (c) be presumed innocent until he is proved or has pleaded guilty"

See: Okeke v. The Republic (2012) 41 MLRG 53 at 61-62. Therefore, in our Criminal Jurisdiction, it is the duty of the prosecution to prove the guilt of an Accused Person who has been charged with a Criminal Offence beyond reasonable doubt.

This means that the prosecution has to lead sufficient evidence such that when the court assesses the totality of the evidence adduced in court including the evidence of the Accused the court will belief beyond reasonable doubt that the Offence has been committed and that it was the Accused Person who committed the offence.

The general rule therefore is that throughout a criminal trial, the burden of proving the guilt of the Accused Person remains on the Prosecution. See Asante v. The Republic [2012] 109 GMJ SC.

Generally, the Accused Person is 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: Commissioner of Police v. Antwi [1961] GLR 408 and Bruce Kodua v. The Republic [1967] GLR 611.

The Evidence Act, 1975 (NRCD 323) formulates this proposition sections 11 (2) and 13 (1) and puts the criminal burden on the prosecution to prove the guilt of the Accused person beyond reasonable doubt.

Section 11 (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 could find the existence of the fact beyond a reasonable doubt".

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

The Prosecution assumed the burden to prove the guilt of the Accused person beyond a reasonable doubt but not beyond the shadow of doubt to secure his connection filed three (3) witness statements as well as some Exhibits. Equally, the accused person filed his witness but no Exhibits to support their case.

The Accused Person was charged with a two (2) count offences, unlawful Entry and Stealing Contrary to Section 152 and 124 (1) of the Criminal Offences Act, 1960 (Act 29).

COUNT 1

Unlawful Entry Contrary to Section 152 of Act 29.

It states: "A person who unlawfully enters a building with the intention of committing a criminal offence in the building commits a second degree felony."

In establishing the offence of Unlawfully Entry, the Prosecution shall prove the following to secure the conviction of the Accused Person.

i. that the Accused person unlawfully entered the building,
ii. that the Accused person entered with the intention to commit an offence,
iii. that the offence is to be committed in the building.

The Prosecution witness, Charles Fiave, PW2 who was their star or material witness stated in his evidence that on that fateful day and at that ungodly hours of 12:00 am and 1:00 am he was from town to his house. That when he reached a shop at Battor-Kekpo, he saw someone at the back of the shop. As at the time he got to the shop, the Accused Person had entered the shop. He then stood there for about 30 minutes and saw him come out of the shop through the window: Immediately, he arrested him and brought him to the Police Station.

In Exhibit A, which was Accused Person's caution statement, he stated that: "On the 8th January 2022, about 12: 00 am, I went to visit nature's call at Battor-Kekpo and went

into Godwin's shop at Battor-Kekpo purposely to steal. That the door was locked so I passed through the window".

Accused person in his witness statement denied any knowledge of the offence of Unlawful Entry which was proffered against him by the prosecution.

The Accused Person's evidence in court and under oath contradicted his earlier statement made to the Police on the 10th of January, 2022 two (2) days after the incident and was very fresh in his made as nothing suggest to the court that he made that statement under duress or under any circumstance for the court to consider. Now when he got the opportunity in court, he could not clear the inconsistencies in both statements. Rather under cross examination, he made the statement that how can a human being pass through this window, thus Exhibit 'C' yet PW2 said he came from that same window. Accused person's explanation cannot be accepted by this court. He is culpable and he cannot escape criminal liability of the offence charged.

On count two (2), the Accused Person was charged with stealing contrary to Section 124 (1) of the Criminal Offences Act, 1960 (Act 29).

It states: "A person who steals commits a second degree felony".

Stealing is defined in Section 125 of Act 29 as: "A person steals who dishonestly appropriates a thing of which that person is not the owner".

From the definition of stealing, Prosecution must prove the

Essential elements:

i) Appropriation of a thing

ii) It was dishonest

iii) The thing belonged to another person.

In Lucienv. The Republic [19770 1 GLR 351, the essential elements of stealing was discussed as follows: that the person who has been charged with the offence of stealing was not the owner of the thing stolen, the Accused Person must have appropriated the thing; and that the appropriation must be dishonest".

Section 122 (2) of Act 29 states: "An appropriation of a thing in any 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 or interest in the thing or in its value or proceeds, or part of that thing".

Section 120 (1) of Act 20 states: "An appropriation is dishonest

(a) If it is made by a person with intent to defraud, or

(b)If 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 the owner of the thing or that the appropriation would if known to the other person, be without the consent of the other person".

From Exhibit 'A', Accused person appropriation an amount of GH₵60.00. The money was found on him when PW2 searched his pocket but he claimed that the money belonged to him during cross-examination but he never or failed to state same in his evidence in court under oath. So who then owned the GH₵40.00 as

contained in the charge sheet. A lot of contractions. This cannot convince the court that he did not appropriated the money which belonged to PW1 and it was dishonest.

The law is settled that the essential elements of the offence of stealing are three and for prosecution to succeed they must prove all the ingredients: namely, dishonesty, appropriation and the thing belonging to another person.

See: Osei Kwadwo II v. The Republic [2007-2008] 2 SC GLR 1148, Ampah v. The Republic [1977] 2 GLR 171, Boah v. The Republic [1991] GLR 483.

I now wish to consider the entire Exhibit 'A'

"On 8th January, 2022 about 12:00 am, I went to visit the nature's call at Battor-Kekpo and I finished, I went into Godwin's shop at Battor-Kekpo purposely to steal. That the door was locked so I passed through the window. I stole GH₵60.00 from the shop so when I finished with my operations and was about going out I was arrested by Charles. As at that time, people were around so they

subjected me to severe beatings. I am not responsible for the previous stealing from the Complainant's shop but rather this is my first time. The reason why I told Police I have been there twice is that, after my cautioned statement, the complainant informed me that if I tell him the truth he will discontinue with the case. That was why I told him I have been there twice".

The Accused person's evidence in court and even under cross examination were full of contractions and conflicting. Accused person evidence in court stated that on the 8th January, 2022 at about 12:00 am, he went to visit nature's call at Battor-Kekpo and

when he finished he went and passed around Godwin's shop at Kekpo and Mr. Charles came and accused him of passing through Mr. Godwin's window to steal.

Accused person in both statements admitted passing by PW1's shop after his alleged attendance to nature's call at about 12:00 am. On one breath he passed through Exhibit 'C' to steal and eventually stole GH₵60.00 and on another a denial of the offences.

Meanwhile, PW1 in his evidence stated how he has experienced several thefts of his money and goods in his shop at Battor-Kekpo. That he closed from the shop on that day, secured the shop and retired to his house. Then around 12:00 am, PW2 came and informed him of the incident. He went to the scene of crime and eventually brought accused person to the Police Station. That he left GH₵55.00 in the shop and Accused person stole GH₵40.00 out of it. That he is therefore convinced that all the previous ones complained off was committed by the Accused person.

The law is settled that a witness whose evidence on oath is contradictory of a previous statement made by him whether sworn or unsworn is not worthy of credit and his evidence cannot be regarded as being of any importance in the light of his previous contradictory statement, unless he is able to give reasonable explanation, the case of Gyabeah v. The Republic [1984-86] 2 GLR 461.

The evidence of the Accused person could not account for explanation in the conflicting and contradicting evidence. The defence is not convincing and lacks

merit as it is inconsistent and does not conform with normal acceptable behaviour and cannot be accepted by the court.

The law is that where a case boils down to facts and credibility of witness if the court takes the view that one side or the other is the truth then the accounts are mutually exclusive of each other. Once the Court decides to believe one side of the story, it means the other side is a fabrication, the case of Ansah Sasraku v. The Republic [1966] GLR 294 at 298.

On the strength of Ansah Sasraku supra and other case law cited coupled with statutes, I hold that the prosecution proved the guilt of the accused person and has linked him to the offences proffered against him beyond reasonable doubt.

From the totality of the evidence adduced, Accused person is hereby pronounce him guilty of Unlawful Entry and Stealing Contrary to Section 152 and 124 (1) of the Criminal Offences Act, 1960 (Act 29) accordingly Accused Person is convicted.

MITIGATION

Accused person pleaded for leniency.

SENTENCE

The Court considered Accused Person's plea in mitigation, age and the fact that he is a first Offender and considered an option of a fine.

Accused Person was sentenced to a fine of hundred (100) penalty units and in default 12 months imprisonment on both counts to run concurrently: Restitution Order. The retrieved GH₵40.00 be given to PW1, Godwin Gakpo the true owner.

(SGD)

H/W MOLLY PORTIA ANAFO-SALIA (MRS)

(DISTRICT MAGISTRATE)

28TH JULY, 2022