

**IN THE DISTRICT COURT HELD AT NKROFUL ON THURSDAY 8TH DAY OF JUNE
2023, BEFORE HER WORSHIP AWO AMISSAH FRENCH ESQ. AS MAGISTRATE.**

CASE NO: B7/27/23

THE REPUBLIC

VRS.

FRANCIS NDABIAH ALIAS AWAH

ACCUSED PERSON PRESENT

DETECTIVE CHIEF INSPECTOR FREDERICK OPOKU FOR PROSECUTION

NO LEGAL REPRESENTATION FOR ACCUSED PERSON

J U D G E M E N T

The Accused person was charged with one count of stealing contrary to section 124(1) of the Criminal Offences Act, 1960 (Act 29).

The brief facts that gave rise to the charges as initially presented to the Court were that complainant in this case is unemployed and a resident of Ngalekpole while accused is a private security man and a resident of Ngalekyi. On the 14th day of March, 2023, at about 2:00am, complainant woke up and detected that a thief or thieves had made away with a Motorola mobile phone valued at One thousand Three Hundred and Fifty Ghana Cedis (GH¢ 1,350) and a Techno mobile phone also valued at One Hundred and Fifty Ghana

Cedis (GH¢ 150), the properties of Theresa Meah now deceased. Upon a complaint lodged with the police on the 25th day of March, 2023, convict Isaac Blay was arrested at Kukuaville, a village in the Nzema East Municipality for dishonestly receiving of a motorbike. A search conducted on him revealed two mobile phones which were subsequently identified by the complainant as belonging to her deceased mother. The convict/witness told the police that it was the accused who gave him the two mobile phones together with a motorbike to sell them far away from Ellembele.

On the 30th day of March, 2023, when accused person was arraigned before this Court and the charges preferred against him was read and explained to him in Twi language, accused pleaded Not Guilty to the count. The court then proceeded to try him on the count of stealing.

Section 11 (2) of the Evidence Act, 1973 (NRCD 323) states that in a criminal action the burden of producing evidence, when it is on the prosecution as to any fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of the fact beyond a reasonable doubt.

Subsection 3 of the same provision says that in a criminal action the burden of producing evidence, when it is on the accused as to any fact the converse of which is essential to guilt, requires the accused to produce sufficient evidence so that on all the evidence a reasonable mind could have a reasonable doubt as to guilt.

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

"A person who steals commits a second degree felony."

Also *Section 125 of Act 29* defines stealing thus;

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

As held in *MENSAH AND OTHERS v. THE REPUBLIC* [1978] GLR 404-427, in order to ground a conviction on this charge, the Prosecution must establish beyond reasonable doubt that;

- a. The person charged must not be the owner of the thing allegedly stolen,
- b. The person so charged must have appropriated the thing,
- c. The appropriation must have been dishonest.

From the evidence before this court, it is obvious that the Motorola mobile phone valued at One thousand Three Hundred and Fifty Ghana Cedis (GH¢ 1,350) and a Techno mobile phone also valued at One Hundred and Fifty Ghana Cedis (GH¢ 150), do not belong to the Accused person.

It is therefore established beyond a reasonable doubt that the Accused is not the owner of the two mobile phones allegedly stolen.

The next element for Prosecution to prove beyond a reasonable doubt is whether or not the Accused appropriated the two mobile phones allegedly stolen.

Section 122(6) of Act 29 defines appropriation thus;

“Appropriation of a thing in any other case means any moving, taking, obtaining, carrying away, or dealing with a thing, with the intent that a person may be deprived of the benefit of the ownership of that thing or of the benefit of the right or interest in the thing, or in its value or proceeds or part of that thing.”

From the evidence of PW2 Isaac Blay, accused gave him the two mobile phones together with the motorbike. Accused could not have given the said mobile phones to PW2 without appropriating them.

The last element to be proved by Prosecution in order to ground a conviction is that the appropriation must have been dishonest. Indeed the mobile phones clearly were not the property of the accused person.

On all the evidence adduced before the Court, I therefore find and hold that the accused person is GUILTY on the charge .

In passing sentence, the court took into consideration the fact that the Accused person is a repeat offender and is a young man. The court also took into consideration his conduct during the whole trial and the need to deter like offenders as the offence of stealing within the jurisdiction is on the ascendency.

The Accused person is sentenced 12 months imprisonments IHL with no option of a fine. I note that accused person has since the 30th day of March, 2023 been remanded into police custody and thus has some days to his credit.

I further order that the mobile phones retrieved should be returned to the complainant with immediate effect.

SGD

H/W: AWO AMISSAH FRENCH

DISTRICT MAGISTRATE, NKROFUL

8TH JUNE, 2023