

**IN THE DISTRICT COURT HELD AT SEFWI JUABOSO ON
THURSDAY, THE 13TH DAY OF JULY, 2023 BEFORE HIS
WORSHIP SAMUEL ENTEE JNR ESQ. THE MAGISTRATE**

CC NO.: 222/23

THE REPUBLIC

VRS.

YAW ADJEI

Accused Person Present

Detective Chief Inspector Solomon Boatari for the Republic Present

JUDGEMENT

The Accused is charged with 3 counts of causing unlawful damage contrary to Section 172 (1) (a) of Act 29, Unlawful Entry contrary to Section 152 of Act 29, and Stealing contrary to Section 124 (1) of Act 29.

The particulars of the offences are that the Accused on 30th May, 2023 at Sefwi Juaboso intentionally and unlawfully caused damage to a padlock and a locker valued GH¢ 30.00 the property of John Opoku, unlawfully entered the kitchen of John Opoku with intent to commit stealing and dishonestly appropriated cooking utensils valued GH¢ 1,082 the property of John Opoku.

The facts of the case are that on 30th May, 2023 about 1:00 pm, the complainant John Opoku a farmer and a residence of Sefwi Juaboso, returned from Juaboso town to the house and wanted to open his kitchen but to his surprise the padlock had been broken. He entered the kitchen and saw that his cooking utensils including 2 ladles (GH¢ 30.00), 5 saucepans (GH¢ 500.00), a basin (GH¢ 300.00), a coal pot (GH¢ 00.00), 2 spoons (GH¢ 2.00), a shovel (GH¢ 70.00) and a cooking pot (GH¢ 80.00) all totalling GH¢ 1,082.00 had been stolen. He reported the case to

police, Juaboso and also went to the FM station and a local information centre at Juaboso and made announcement about the theft of his items. He again informed his neighbours and scrap dealers at Juaboso to assist him to get the suspect arrested. On that same day Accused went to a scrap dealer who is a witness in this case with 4 saucepans, one cooking pot, and 2 ladles to offer same for sale. The scrap dealer took the items to the complainant and he identified same to be his. On 31st May, 2023 about 5:30 am, Accused went to the scrap dealer's home for his money and in the process the scrap dealer arrested him and handed him over to the police, Juaboso and informed complainant. After investigation, Accused was charged with the offences as stated in the charged sheet, and put before the court for prosecution.

The prosecution in order to prove their case against Accused called 3 witnesses: the complainant, John Opoku (PW1), the scrap dealer Jomo Keyantta (PW2) and the investigator in the case, PW/Constable Margaret Eduah (PW3).

THE CASE FOR THE PROSECUTION

John Opoku testified that on the day of the incident, he returned from town and saw that the padlock on his kitchen door had been broken and his basin, cooking pot and pans, a ladle and a shovel had been stolen. That he quickly went to the scrap dealer, Jomo, and asked him whether someone had brought such items to him. From there he went to Rainbow FM station and a local information centre and made announcement about the stolen items. That about 9:00pm Jomo brought some items to show him at home and he identified them as the stolen items, and subsequently they reported the matter to the police. That at the following dawn Jomo brought the Accused to his home that, Accused was the person who stole the items and sold them to him, and they took Accused to the police Station.

THE CASE FOR THE ACCUSED PERSON

The accused testified that on the day of the incident a driver gave the items to him to sell, and he went and sold them to Jomo who gave him GH¢15.00 on the spot and asked him to return later. That he returned to Jomo at dawn and Jomo arrested him and was taking to the police station.

The issues for determination are:

1. Whether or not the Accused is guilty of the offence of causing unlawful damage
2. Whether or not the Accused is guilty of the offence of unlawful entry and
3. Whether or not the Accused is guilty of the offence of stealing.

ISSUE 1: Whether the Accused is guilty of the offence of causing unlawful damage

Section 172 (1) (a) of Act 29 provides, “A person who intentionally and unlawfully causes damage to property to a value not exceeding one million cedis or without a pecuniary value, commits a misdemeanour”.

The prosecution must prove that:

1. Accused caused damage to the kitchen padlock,
2. Accused caused the damage intentionally, and
3. Accused caused the damage unlawfully.

John Opoku (PW1) told the court that when he returned from town the padlock had been broken by someone who entered the kitchen and took away some items. The Accused denied breaking the padlock on PW1’s kitchen door. He said it was rather a certain man called Driver who gave the items to him to sell. In his investigation caution statement to the police, Exhibit A, which was tendered in evidence by the investigator in the case, PW/ Constable Margaret Eduah, the Accused stated that it was the said Driver who gave the items to him to sell. But when it was put to him that the investigator (PW3) asked him to lead her to the said Driver, he could not do so, Accused replied that PW3 did not ask him to take her to the said driver. When he was asked why he did not on his own volition lead the police to Driver who he (Accused) claimed gave the items to him, granted that the police did not ask him to do so, Accused replied that he was waiting for the police to tell him to lead them to Driver.

Even though the Accused had the right to refuse to help the police, in their investigation, but in this case he was the one arrested because he sold the alleged stolen item to another person. So in the view of the court in order for Accused to be exonerated from the theft of the items it would have been in his own interest to have led the police to the said Driver who allegedly gave the items to him to sell. For failing to grasp the opportunity to exonerate himself from the charges against him, the court finds it difficult to believe Accused’s evidence that someone called Driver gave the items to him to sell.

The court’s difficulty in believing that a certain driver gave the items to accused is buttressed by the evidence of Jomo Keyantta (PW2) who said when Accused brought the items to him to buy he told accused that the items belong to someone. This was because PW1 had earlier informed him that his items had been stolen so he should keep the item for him if someone should come

and sell them to him since he was a scrap dealer. But accused said he brought the items from far away. The accused declined to cross examine PW2.

The court is of the view that if it was Driver who gave the items to Accused, he would have told PW2 when PW2 said the items did not belong to him. Since the complainant, PW1, identified the items as the items taken from his kitchen the court is of the view that Accused could not have obtained the items from PW1's kitchen without breaking in. And since he could only break in by destroying the padlock on the kitchen door, I find that Accused caused damage to the padlock and locker on PW1's kitchen door.

Also Section 11(1) of Act 29 provides that when a person does an act for the purpose of causing an event that person intends to cause that event. Therefore, since PW1's kitchen door was locked with a padlock and Accused entered the kitchen without the key then in the view of the court Accused intended to cause damage to the padlock and its locker.

Accordingly I find that Accused intentionally caused damage to the padlock and locker of PW1's kitchen door.

Additionally, section 174(1) of Act 29 explains unlawful damage to the extent that a person does an act or causes an event unlawfully where that person is liable to a civil action or proceeding or to a fine or any other punishment under an enactment @ in respect of the doing of the act causing an event. Since the padlock and its locker did not belong to Accused, it is the view of the court that Accused will be liable if the complainant takes a civil action against him for the damage he caused to the padlock and its locker.

I therefore find that Accused unlawfully caused damage to the padlock locker of the complainant's kitchen door.

ISSUE 2: Whether or not Accused is guilty of the offence of unlawful entry

Section 152 of Act 29 provides that "A person who unlawfully enters a building with the intention of committing a criminal offence in the building commits a second degree felony." The prosecution must prove that:

1. Accused entered the kitchen,
2. Accused entered the kitchen unlawfully, and

3. Accused had the intention of committing a criminal offence at the time he entered the kitchen

PW1 said when he entered the kitchen he saw that his cooking utensils had been stolen and Accused said it was driver who gave the utensils to him to sell. The evidence however, showed that no one gave the items to Accused to sell. The court is therefore of the view that Accused could not have come into possession of the utensils without entering PW1's kitchen to pick the utensils.

I therefore find that Accused entered PW1's kitchen.

Section 153 of Act 29 provides that "A person unlawfully enters a building if that person enters otherwise than in the exercise of a lawful right or by the consent of any other person able to give the consent for the purposes for which that person enters." Since the evidence showed that the kitchen belonged to PW1 and Accused was not a house help of PW1, Accused could not have exercised a lawful right in entering PW's kitchen. There was also no evidence that PW1 gave Accused permission or gave his consent to him to enter the kitchen. On the evidence therefore, I find that Accused unlawfully entered the kitchen. Furthermore, the evidence indicated that after breaking into the kitchen, Accused took away items from the kitchen. It is therefore the view of the court that Accused entered the kitchen with intention of committing a criminal offence, and I find as such. Accordingly, I find that Accused is guilty of the offence of unlawful Entry.

ISSUE 3: Whether or not Accused is guilty of the offence of stealing.

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

Section 125 of Act 29 defines stealing as; "A person steals who dishonestly appropriates a thing of which that person is not the owner".

In Republic V. Halm & Another [1969] CC 155, CA, it was held that the three elements which require proof in charge of stealing are:

1. That the person charged must not be the owner of the thing allegedly stolen,
2. That he must have appropriated the thing, and
3. That the appropriation must have been dishonest

So for the prosecution to succeed the prosecution must prove the 3 element of stealing stated above.

The evidence before the court indicated that the utensils in question did not belong to Accused. But he entered the kitchen and took the utensils away.

Section 122 (2) of Act 29 provides “An appropriation of a thing 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”.

The evidence indicated that Accused entered the kitchen of PW1 and took or carried away PW1’s utensils. Therefore the court is of the opinion that Accused had the intent to deprive PW1 of the benefit of the ownership of the utensils. Accordingly, I find that Accused appropriated the utensils.

Additionally, section 120 (1) of Act 29 provides that “An appropriation is dishonest: (a) if it is made without the intent to defraud, or (b) If it is made by a person without claim of right and with a knowledge or belief that the appropriation is without the consent of a person who is the owner of the thing.

The evidence was clear that Accused was not the owner of the utensils. Therefore he appropriated the utensils without a claim of right to the utensils. The evidence also indicated that PW1 did not consent to the appropriation of the utensils by Accused, as he went to the Rainbow FM Station and a local information centre all at Sefwi Juaboso and made announcement about his missing utensils and further threatened to invoke a curse on the person who took the utensils away. On the evidence therefore, I find that accused dishonestly appropriated PW1’s utensils.

Accordingly, I find that Accused is guilty of the offence of stealing.

On the evidence before the court, I am satisfied that the prosecution have proved their case against the Accused on the charges beyond reasonable doubt.

Accordingly the Accused person is hereby convicted on each of the three counts of causing unlawful damage, unlawful entry and stealing.

According to the prosecution Accused was convicted and sentenced in 2018 in CC. NO. 28/19, for causing unlawful damage, unlawful entry and stealing and made to sign bond to be of good behaviour for 12 months or in default 6 months IHL. Then in 2021 he was sentenced to 12 months IHL for stealing a car battery. The Accused admitted that what the prosecution told the court was true and told the court to be lenient with him.

It seems to the court that the Accused is a recidivist who does not want to turn over a new leaf but to wallow in his old ways of criminal activities. It is the view of the court that in order to safeguard residents and others within the jurisdiction of this court so that they will get their peace of mind to go about their daily

economic activities, the Accused should be removed from the community for as long as the law permits. This in the view of the court will also serve as a deterrent to others who probably are hatching plans to indulge in such criminal activities. Accordingly, Accused is hereby sentenced to 48 months IHL on each count to run concurrently. Restitution order is hereby made for the items retrieved from Accused to be handed over to the owner, John Opoku.

SGD ::: SAMUEL ENTEE JNR. ESQ.
THE MAGISTRATE