

IN THE DISTRICT COURT
AGONA SWEDRU - A.D. 2023
BEFORE HIS HONOUR ISAAC APEATU

Court Case No 222/2023

27th February, 2023

THE REPUBLIC

Versus

KWESI ADJEI

DANIEL MENSAH

JUDGMENT

The accused persons were arraigned before this court charged with one count of stealing contrary to section 124(1) of Act 29. They pleaded not guilty to the charge. It was the result of the plea leading to a full trial for evidence to be taken which has culminated in this judgment.

The facts of this case as contained in the charge sheet and as narrated by the prosecution was that the complainant and accused persons are litigating over a parcel of land lying at Agona Ahomadonko. On 13th December, 2022, while the complainant was at home, the accused persons went to his cocoa farm on the said land and harvested a quantity of cocoa pods valued GH¢650 claiming that the cocoa farm is on their land. While conveying the fresh cocoa beans home, complainant spotted the accused persons and made a report to the police leading to their arrest. After investigations, the accused have been charged with the offences.

In proof of these facts, the prosecution called the complainant, whose name was given as Richard Kofi Aidoo as its first witness (PW1). Prosecution further called the investigator who gave evidence as PW2 and one Kofi Appiah as PW3. The case of the prosecution as evidenced from the witnesses called on its behalf is that there is a litigation over a piece of land at Ahomadonko. That the accused have laid claim to the land. That they have rejected the authenticity of the documents which he presented to the panel of chiefs. On 14th October 2022, the omankrado and his panel members ruled that the entire land was going to be divided into two for the family of the accused and PW1. That PW1 objected to it. That the accused persons went to PW1 and attacked him not to step foot in the farm again. That the chiefs took money from the accused persons and changed their verdict and instructed the accused to take the land. That PW1 went onto the farm but accused persons attacked him and threw his phone into the bush and assaulted him. That on 13th December 2022, PW1 went to the farm to water his seedlings. Accused persons attacked him with cutlasses and warned him to leave the farm. The accused later went to PW1's farm and harvested the cocoa belonging to PW1 without his consent. That PW1 lodged a complaint against the accused persons and when the farm was visited, they retrieved some of the cocoa beans from the accused.

During the cross-examination that followed, counsel for the accused maintained that the land belongs to the accused and that they were on the land in good faith and so they had a claim of right to the cocoa on the farm. The complainant however denied this assertion maintaining that the land does not belong to the accused.

After calling the above witnesses, the prosecution intimated that it was closing its case. Accused persons were then called to open their defence(s). After the opportunity had been given to them to mount the box to give evidence in defence of the charges, 1st accused declined to give evidence in his defence. He passed the baton on to the 2nd accused who testified. They however did not call any witnesses. The nub of the 2nd accused's evidence is that the complainant made a charge of stealing against him and the 1st accused. He told them that he did not steal cocoa from the farm. It was a panel of

chiefs who had sat on the matter who had directed him to go to the farm to do any work on it. The chiefs gave each of the parties a document which contained all their orders. So to him, he does not understand why the complainant made the charge against him.

During the ensuing cross-examination, the 2nd accused denied that there was a confrontation between him and the accused. He maintained that there was no litigation between them because the matter had already been ruled on by the chiefs before he went to the farm.

Because the accused persons herein did not plead guilty to the charges when their pleas were taken, the case had to proceed to trial to determine their guilt or otherwise. However, when such accused persons are arraigned before a court, the law treats them as directed by the 1992 Constitution. The law has always been that a person who is accused of having committed an offence is presumed innocent until he has been proven guilty or he has voluntarily pleaded guilty to the charge. This is a constitutional injunction provided for by Article 19(2) (c) of the 1992 Constitution of Ghana. The burden of proof that such an accused person is guilty in a criminal case is therefore on the prosecution at all material times. It is on the prosecution to introduce sufficient evidence to establish the guilt of the accused in respect of the charges levelled against him. It has been held that the failure to discharge that burden should lead to the acquittal of the accused. And this proof required of the prosecution is said to be proof beyond reasonable doubt. See **Oteng v The State [1966] GLR 352**. So while the prosecution is required at all times to prove the guilt of the accused beyond reasonable doubt, in the converse, the accused person is not required to prove anything. All that is required of him as an accused person, is to raise a reasonable doubt as to his guilt. See **Commissioner of Police v Antwi [1961] GLR 408**. It has also been held that it is not enough for the court to hold that it does not believe the defence of the accused and then proceed to convict him. Short of disbelieving the defence, the court has a duty to consider whether the defence is reasonably true or reasonably probable.

From the facts and evidence led in this case as stated above, the issues that call for determination in this case are;

1. Whether or not accused persons appropriated the sack of cocoa beans from complainant's farm.
2. Whether or not the appropriation was dishonest
3. Whether or not the prosecution proved the offences beyond reasonable doubt.

I must state here that even though the above are the main issues reserved for determination in this matter, there are other ancillary issues which shall be brought up and determined in a bid to bring quietus to the case at hand.

Having set down the above issues for determination, I shall presently evaluate the evidence led by the prosecution to determine the guilt or otherwise of the accused persons. I have stated in my opening statement above that the accused persons were charged with one count of stealing contrary to section 124 (1) of Act 29. The allegations made by the Prosecution against the accused as contained in the charge sheet is that the accused persons entered the farm of PW1 and appropriated cocoa beans the properties of PW1. The charge of stealing was founded under Section 124(1) of Act 29. However, it is section 125 that sums up the requisites of the offence viz:

‘A person steals if he dishonestly appropriates a thing of which he is not the owner.’

In the case of **Republic v. Halm and Another**, Court of Appeal, 7 August 1968, unreported; digested in (1969) C.C. 155, Amissah J.A. laid down the basic ingredients of the offence of stealing as follows:

“Both in common parlance and in the contemplation of the law, a person is said to steal ‘a thing’. Primarily the offence is committed in respect of ‘a thing’. Whether such ‘a thing’ can properly be said to have been stolen or not depends on the existence of certain relations, the doing of a certain act to it, coupled with an intention... For the offence of stealing to be constituted, therefore the relations, act and intention to be proved in connection with ‘the

thing' are:

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

These are the basic ingredients requiring proof by the prosecution beyond reasonable doubt in a charge of stealing. These principles of law as enunciated have found corroboration in cases such as **Lucien v The Republic [1977] 1 GLR 35; Ampah v The Republic [1977] GLR 404; Baah v The Republic [1991] GLR 483.**

The accused herein did not deny carrying away the cocoa beans from the farm. They readily admitted that they went to the farm and carried away the cocoa. So, there is proof on the record that they appropriated the cocoa beans from the farm. Indeed section 122(2) of Act 29 defines appropriation of a thing in these terms:

- (2) An appropriation of a thing... means any moving, taking, obtaining, carrying away, or dealing with a thing, with intent that some person may be deprived of the benefit of his ownership, or of the benefit of his right or interest in the thing...or any part thereof.

The effect of the above section is that for the offence of stealing to be proved, there must be proof of a positive act done by the accused person in respect of the thing alleged to have been stolen. So in this case, as I have already alluded to, the accused admitted carrying the beans away from the farm. So, on the first issue, the appropriated the cocoa beans.

Now, was the appropriation dishonest? In other words, was the act of taking away the cocoa from the farm with the requisite intent? The requisite intent is that the appropriation must be dishonest. But proof that an appropriation is dishonest may be done in a number of ways prescribed by law. I think that to prove this leg of the elements, the prosecution should be able to establish that the accused took away the cocoa beans from the farm with intent to deprive the owner of his ownership in the cocoa. Such an appropriation must also be with an intent to defraud or must have been

made by the accused persons without claim of right, and with a knowledge or belief that the appropriation is without the consent of the owner thereof. In other words, that accused took the beans away from the farm without the intent of restoring them back to such an owner. Section 120 of Act 29 explains dishonest appropriation in these terms:

- “(1) An appropriation of a thing is dishonest if it is made with an intent to defraud or if it is made by a person without claim of right, and with a knowledge or belief that the appropriation is without the consent of some person for whom he is trustee or who is owner of the thing, as the case may be, or that the appropriation would, if known to any such person, be without his consent.
- (2) It is not necessary, in order to constitute a dishonest appropriation of a thing, that the accused person should know who is the owner of the thing, but it suffices if he has reason to know or believe that some other person, whether certain or uncertain, is interested therein or entitled thereto, whether as owner in his own right, or by operation of law, or in any other manner...”

From the above it can be said that an appropriation of a thing is dishonest if it is proved that the appropriation was made:

- (i) with intent to defraud; or
- (ii) by a person without any claim of right; and
- (iii) with a knowledge or belief that the appropriation was without the consent of some person for whom he was a trustee or who was the owner of the property appropriated; or
- (iv) that if the appropriation was known to the trustee or owner of the property, it would be practically objected to.

The principle is that whether an act is dishonest or not touches on the state of mind of the person who does the act which amounts to appropriation. But whether an act is dishonest or not is often determined from the surrounding circumstances of the event as a man’s intention is difficult to determine.

The elements of the offence have been well laid out. However, the conundrum herein is that the accused claim that the farm from which they carried the cocoa belongs to them. They claim that the land does not belong to PW1 as a result they had the right to have carried the cocoa therefrom. The whole case thus appears to have arisen from the tussle over the ownership of the farm. Counsel for the accused persons stressed the point that the accused had a claim of right to have taken the cocoa from the farm because they own the farm.

Is there evidence then that PW1 owns the farm from which the accused persons carried away the cocoa? From the evidence, I do not find direct evidence of ownership of the farm by PW1. Reading the witness statement of PW1 on which he placed reliance as his evidence in chief, there have been series of squabbles on the ownership of the land. These squabbles over ownership have been the subject of an arbitration before the chiefs and elders of the locality in which purported rulings have been made. PW1 claims to have rejected the arbitral award which appears to have gone in favour of the accused persons. The accused persons however appear to have held the ruling in esteem and entered the land and taken what they think belong to them.

Now, even though presently there is no clear cut owner of the land from where the cocoa was taken, it appears that the cocoa on it was planted by PW1 and his family. It appears also from the evidence that PW1 has tenants on the land whom he claims the accused persons have been harassing. So, did the accused have a claim of right to have entered onto the farm to have taken the cocoa beans?

A claim of right is a defence in law to a charge of stealing. It is an absolute defence which if proved by an accused, is capable of taking out a charge of dishonest appropriation. A claim of right is one that is made in good faith under section 15 of Act 29 and it is inconsistent with and negates the mens rea of the offence of stealing which is dishonesty. In the case of **R v Bernhard [1939-40] 31 Cox CC 61**, the court held that a

person has a claim of right if he is honestly asserting what he believes to be a lawful claim even though it may be unfounded in law or in fact. The emphasis is on the honesty of the belief in the claim. In the case of **Republic v Woyome, suit No H2/17/15, 10th March 2016**, the Court of Appeal held that a claim of right must be made in good faith and there must be evidence to support the bona fides of the claim. The court however emphasized that a claim of right cannot be just any fanciful, baseless or spurious claim without any factual or legal basis.

In this case, counsel for the accused persons suggested to the prosecution witnesses during his cross-examination that the accused persons had a claim of right to the cocoa beans they took from the farm because the farm belongs to them. The implication of the above is that counsel seeks to say that the element of consent which is of foremost importance in proof of intention is nullified because the accused persons did not need to seek the consent of PW1 before they could take the cocoa from the farm. As I stated above, I find from the evidence that the ownership of the farm has been the subject of litigation or some contention. There does not appear to be a clear cut owner of the farm from where the accused have admitted to taking the cocoa. It is in the evidence that the matter was the subject of an arbitration before a panel of chiefs and elders at Agona Nkum. It is in the evidence that the chiefs gave out an award in favour of one of the parties but the other party did not accept the award. Clearly therefore, the matter of who owns the farm has not been determined. That being the case, it cannot be said that the accused persons ought to have sought the consent of PW1 before entering onto the farm. I find that the accused had a genuine, far from fanciful, claim of right to have entered the farm and taken the cocoa from it.

I think that if I had found that the accused merely entered onto the farm of PW1 to harvest cocoa without the antecedent events I have recounted above, then they would have been adjudged to have raised the defence of claim of right without basis. But in this instance, there has been a clear indication that there is a long-standing contention between them respecting ownership of the farm. I arrive at this decision

notwithstanding the impression I get from the evidence that the cocoa was actually cultivated by PW1 or his predecessors. Once there was a genuine claim by the accused to ownership of the farm, they cannot be said to have dishonestly appropriated the cocoa from it. I find that the accused persons had a claim of right to have appropriated the cocoa beans from the farm. The beans cannot be said to entirely belong to PW1 so long as a determination of who has the right title has not been made. They did not need to seek the consent of PW1 before they carried the beans away from the farm. I hold that even though the accused persons appropriated the cocoa beans from the farm, the appropriation cannot be said to be dishonest due to the claim they have over the farm and all that is on it.

Having held as I have above, I wish to sound a word of caution to the accused persons over their conduct in this matter. It is true that a declaration has yet to be made over title to the farm. However, before the accused laid a claim to the farm leading to the arbitration and the other proceedings, it was PW1 and his family who occupied the land. In fact, they presently occupy it. I find from the evidence that they have tenants on the land. They planted the cocoa the subject of this tussle. I do not think that the fact that the accused persons have laid a claim to the land suggests that PW1 and his family have no interest over the cocoa on the farm. It appears parties are before another court for a determination of the ownership of the farm. That is good. However, before that determination is done, the accused persons should be advised to tread cautiously in their pursuit of what they deem to be theirs. They are cautioned to desist from any acts that has the tendency to inflict any harm or injury to either PW1 or the farm. They are cautioned to abide the final ruling of the court before whom the claim for declaration of title has been filed.

I have considered the evidence on record and the circumstances of the case thoroughly. On the totality of the evidence on record, I am of the firm conviction that the prosecution failed to prove all the elements of the charge of stealing beyond reasonable doubt against the accused persons. The accused persons are therefore found not guilty

of the charge of stealing contrary to section 124(1) of Act 29. Save the words of caution contained above, the accused persons are hereby acquitted and discharged.

HIS HONOUR ISAAC APEATU

DISTRICT MAGISTRATE