

**IN THE DISTRICT COURT SITTING AT WALEWALE ON MONDAY 6<sup>TH</sup> FEBRUARY 2023**  
**BEFORE H/W SIMON KOFI BEDIAKO ESQ – MAGISTRATE**

SUIT NO. NE/ DC/WW/16/2023

**THE REPUBLIC**

**VRS**

- 1. SALISU SULLEY (A1)**
- 2. FATAWU FUSEINI (A2)**
- 3. HARDI KUDUS (A3)**
- 4. ADAM KUDUS (A4)**
- 5. JORBRILA KARIM (A5)**
- 6. FAISAL NANTOMAH (A6) (AT LARGE)**

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**JUDGEMENT**

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**INTRODUCTION**

The Accused persons except for A6 who is at large were arraigned before the Court on 29<sup>th</sup> August 2022 and charged with various offences specified below.

- a) A1, in count one, was charged with Stealing: contrary to Section 124(1) of the Criminal Offences Act 1960, Act 29.
- b) A2, in count two was charged with Dishonestly Receiving: contrary to section 146 of the Criminal Offences Act 1960, Act 29.

- c) A3, in counts three, four and five was charged with Causing Unlawful Damage: contrary to section 172 of the Criminal Offences Act 1960, Act 29, Unlawful Entry: contrary to section 152 of the Criminal Offences Act 1960, Act 29, and Stealing: contrary to section 124(1) of the Criminal Offences Act 1960, Act 29.
- d) A4, in count six was charged with Dishonestly Receiving: contrary to section 146 of the Criminal Offences Act 1960, Act 29.
- e) A5, in count 7 was charged with Dishonestly Receiving: contrary to section 146 of the Criminal Offences Act 1960, Act 29.

## PLEA OF THE ACCUSED PERSONS

The charges as stated in the charge sheet against each accused person were read to them individually in the Mampruli language to their understanding after which A1, A2, A3, A4 and A5 pleaded **Not Guilty** to the respective charges against them.

## BURDEN OF PROOF:

The Accused persons pleaded not guilty to the charges against them, which places the burden of proof on the prosecution to prove the guilt of the Accused persons. The burden of proof and how it can be discharged by the prosecution to secure a conviction of the Accused persons are elaborated below.

**Article 19(1) and (2) (c) of the 1992 Constitution of the Republic of Ghana** stipulates that:

### *19. Fair Trial*

- "1. A person charged with a criminal offence shall be given a fair hearing within a reasonable time by a court.
- 2. A person charged with a criminal offence shall
  - c. be presumed to be innocent until he is proved or has pleaded guilty;"

**Sections 11(1) (2) and (3), 13(1) and (2) and 15 (1) of the Evidence Act, 1975 (N.R.C.D. 323)** have well settled the evidential and the persuasive burden that the law casts on Prosecution in a criminal matter. It provides as follows:

*Burden of producing evidence*

11. (1) *For the purposes of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party.*
- (2) *In a criminal action, the burden of producing evidence, when it is on the prosecution as to a fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on the totality of the evidence a reasonable mind could find the existence of the fact beyond a reasonable doubt.*

*Proof of a crime*

13. (1) *In a civil or criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt.*
- (2) *Except as provided in section 15 (c), in a criminal action, the burden of persuasion, when it is on the accused as to a fact the converse of which is essential to guilt, requires only that the accused raise a reasonable doubt as to guilt.*

*Burden of persuasion in particular cases*

15. *Unless it is shifted,*

- (a) *the party claiming that a person has committed a crime or wrongdoing has the burden of persuasion on that issue;*

In the case of **Woolmington v DPP [1935] UKHL**, stating the judgement for a unanimous Court, Viscount Sankey made his famous “Golden Thread” speech that:

*“throughout the web of the English criminal law one golden thread is always to be seen, that is the duty of the prosecution to prove the prisoner’s guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exceptions...No matter what the charge or where*

*the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained."*

Lord Denning J (as he then was) in the case of **Miller v Minister of Pensions [1947]**

**2 All ER 372 at 373** in respect of proof beyond reasonable doubt stated that *"It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice"*.

He further stated in the same case that *"If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible, but not in the least probable, the case is proved beyond reasonable doubt'"*.

## **THE CASE OF PROSECUTION**

Below are the brief facts of the case as presented by the prosecution in support of the charges against the Accused persons.

The complainant in this case, Babanda Akoseh is a 33-year-old nurse and a businessman. The accused persons are Salisu Sulley (A1), a 21-year-old Mason, Fatawu Fuseini (A2), a 19-year-old driver's mate, Hardi Kudus (A3), a 23-year-old mechanic, Adam Kudus (A4), a 23-year-old electrician, Jobrila Karim (A5), a 21-year-old unemployed, and Faisal Nantomah (A6) who is currently at large. All accused persons are residents of Walewale. On 22/06/2022 at about 7:00 am, the complainant went to his shop located opposite GCB bank and detected that it was broken into through the roofing and about thirteen (13) brand new assorted smartphones, phone charges, memory cards, keypads and other repairable phones all valued GHC30,000 were stolen from his shop. On 13/07/2022, an intelligence-based operation led to the arrest of A2 with one of the mobile phones (Itel A58) which were stolen from the complainant's shop. A2 was briefly interrogated and claimed to have dishonestly received the said phone from A1. A1 was also arrested together with four of the complainant's phones and in his voluntary caution statement, told police that on the

day of the incident, he saw A3 and his accomplice stealing from the complainant's shop. A3 and his accomplice upon seeing A1 took to their heels and whilst they were running, dropped a cloth containing phones and chargers. A1 then picked the same and kept the same to himself. A1 also told police that A6 stole three of the phones from him and sold two to A4 and A5. A4 and A5 were subsequently arrested and two of the phones were retrieved from them. A4 and A5 admitted in their voluntary caution statement of buying their respective phones from A6. During investigations, seven (7) of the smartphones belonging to the complainant were retrieved from the accused persons and same kept for evidential purposes. Efforts are still ongoing to get A6 arrested. Meanwhile, the accused persons were charged with the offences as stated in the charge sheet and brought before this honourable court.

To discharge the burden of proof imposed on the prosecution, the prosecution called two witnesses to testify in support of its case.

The first witness of the prosecution is the Complainant called Akoseh Babanda (**PW1**). PW1 testified that he lives in Walewale and a native of Langbinsi. He stated that he operates a mobile phone shop near Zangu junction in Walewale where he sells new mobile phones and repairs damaged ones. He avers that on 22<sup>nd</sup> June 2022 at about 7: 30am he received a call from his brother that his shop has been broken into through the roof by unknown persons and they made away with assorted mobile phones and accessories valued at about GHS 30,000. According to PW2 he rushed to the shop and realised that the thief or thieves had access through the roof of the shop. He then reported the matter to the police. He avers that on 13<sup>th</sup> July 2022, he saw one of his stolen mobile phones that is Itel A58 with A2. He stated that he questioned A2, and he said that he received the phone from A1. According to PW1, he informed the police and the police arrested A1 and A2.

The prosecution called the police investigator by name No. 54887 G/L/CPL Amoani Eric (**PW2**) as its second witness. He testified that a case of stealing was referred to him on 22<sup>nd</sup> June 2022 by PW1/Complainant. According to him the police together with the Complainant went to the crime

scene which is opposite GCB bank and took photographs of the crime scene. He stated that on 13<sup>th</sup> July 2022, an intelligence-based operation led to the arrest of A2 with one of the stolen phones that is Itel A58 in his possession. He testified that A2 mentioned that A1 was the person who gave him the phone. As a result of this information from A2, A1 was also arrested. According to PW2, A1 told the police that A6 stole three (3) of the phones and sold two (2) to A4 and A5. PW2 stated that A1 also told the police that A3 and his accomplice were the ones he saw stealing from the Complainant's shop. A3, A4 and A5 were subsequently arrested. According to PW2, investigation caution statements and charged caution statements were subsequently taken from A1, A2, A3, A4 and A5.

PW2 tendered in evidence the following exhibits:

- Exhibit A1 – Investigation caution statement of A1.
- Exhibit A2 – Charged caution statement of A1.
- Exhibit A3 – Investigation caution statement of A2.
- Exhibit A4 – Charged caution statement of A2.
- Exhibit A5 – Investigation caution statement of A3.
- Exhibit A6 – Charged caution statement of A3.
- Exhibit A7 – Investigation caution statement of A4.
- Exhibit A8 – Charged caution statement of A4.
- Exhibit A9 – Investigation caution statement of A5.
- Exhibit A10 – Charged caution statement of A5.
- Exhibit B series – Photographs of the crime scene.
- Exhibit C – Four (4) mobile phones retrieved from A1.
- Exhibit D – Itel A58 mobile phone retrieved from A2.
- Exhibit E – Tecno Pop PD1 mobile phone returned by A1 after disclosures had been filed.
- Exhibit F – Tecno Spark 7 retrieved from A5.

- Exhibit G – Tecno Spark 7 phone retrieved from A4.

At the close of the prosecution's case, the court in accordance with **section 173 of the Criminal and Other Offence (Procedure) Act, 1960 (Act 30)** ruled that the prosecution had made a prima facie case against A1, A2, A3, A4 and A5 which is sufficient to require them to open their defences. A1, A2, A3, A4 and A5 were duly called upon to open their respective defences. See **Tsatsu Tsikata v The Republic [2003-2005] 2 GLR 294, SC.**

## **CASE OF A1**

A1 in his evidence-in-chief testified that he is a mason and lives in Fongni. He told the court that he was coming from Fongni when he saw that some blocks had been packed on a table close to a store on the roadside. He added that there were blocks also packed on top of the Zinc roof of the store. According to A1, there was one person on the roof of the store handing down items to another person on the ground. He stated further that he went and picked up a cutlass and walked towards them and they ran away. A1 stated that A3 was one of the people who broke into the store. According to him when he approached them with the cutlass, A3 told him that he will see. A1 testified that because he chased them and they ran away, they left the items they stole there. From the testimony of A1, he took the stolen items and kept them. According to A1, he subsequently got information that police were looking for him and the items and because of this he sent the items to a friend in Gambaga. He concluded that he was arrested by the police, and he led them to Gambaga to retrieve the items.

A1 in Exhibit A1 which is his investigation caution statement stated that on 22<sup>nd</sup> June 2022 at about 8:00 pm he was in a certain building close to the shop of the PW1 smoking when it started to rain. He continued that he was running home when he saw a table with blocks packed on it close to PW1's store. He narrated that he saw one guy standing on top of the table and another guy coming out from the roof of the shop. According to A1 suspecting that they were thieves, he went to a

nearby packed sprinter and brought a cutlass to chase them away. He stated that while he was chasing them, one of them dropped a cloth which contained some items into a gutter. He added that the two guys managed to escape into the bush near the Pentecost church. According to him, he went back for the cloth and found the following:

1. Infinix 12i phone
2. Techno 5 pro
3. One Techno KF75
4. One Infinix X657
5. One infinix Note II
6. One Itel A58
7. One Itel A661 and
8. Two chargers

According to A1 when he picked up the phones, he went and hid them in an uncompleted building in his area. He continued that he realised subsequently that A6 had gone to steal three of the phones. He stated that he later found two of the phones with A4 and A5 and they each told him A6 sold the phones to them. He concluded his statement that it was the A3 he saw on the day of the incident standing on the table and receiving the stolen phones from his accomplice. Exhibit A1 was admitted into evidence without objection making it admissible hearsay evidence under **section 120 (2) of the Evidence Act 1975 (N.R.C.D 323)**.

A1 continued in Exhibit A1 that he sent the phones to the house and showed it to one Karim and told him how he got them. According to A1, Karim advised him to show them to his grandfather the next day, but he did not agree and convinced him that the owner will not be able to find them. He added that he exchanged the Itel A58 with A2 and took A2's Infinix phone which he later sold to someone for GHS 260. According to him, suspecting that he will be arrested he sent the remainder of the phones to a friend in Gambaga.



During cross-examination of A1 by the prosecution, he admitted that he picked up 11 phones which were covered in a rag from the store. He also stated that he picked up some phone chargers, but he does not know the quantity. He stated that the phones and chargers were in his possession for two (2) weeks. Further questions put to him led him to state that A6 who is at large took three out of the 11 phones and run away with them. He also stated that he sent 4 of the phones to a friend in Gambaga where he subsequently led the police to retrieve them. During cross-examination of A1 by A2, A1 admitted that he swapped one of the phones with that of A2.

## **CASE OF A2**

A2 testified that he lives in Walewale and works as a driver's mate. He stated that on the instructions of his mother, he brought some items from Techiman to Walewale for an impending festivity in Walewale. According to A2 when he arrived in Walewale, he went to town and met A1. He told the court that he was using an Infinix smart 5 phone at that time. A2 avers that when he met A1, A1 followed him to his house. He stated that he told A1 that the phone he is using has some cracks on it and A1 told him he has an ITEL phone he is using which he would like to exchange with A2's phone if he is interested. A2 testified that he subsequently exchanged his phone with that of A1. According to A2, he did not know that the phone he exchanged his with was a stolen phone. He stated that on the day he was arrested, his brother saw him holding the phone and his brother told him that one of his friends informed him that the phone he is holding is a stolen phone. According to A2, he told his brother that he got the phone by exchanging his phone with that of A1. A2 concluded that he was then arrested by the police on the same day.

## **CASE OF A3**

A3 gave a very brief testimony. He stated that he is a motor mechanic and lives in Fogni. He testified that he knows nothing about the case, but he is being accused of cutting the zinc roof and entering the store.

A1 in his evidence-in-chief stated that he saw A3 at the scene of the crime. He told the court that A3 was standing on a table and receiving items from another person who was on the roof of PW1's store. A1's testimony indicates that it was A3 and his accomplice, who broke into PW1's store and stole the phones and chargers. A3 cross-examined A1 but he could not put any dent in the evidence of A1. He sort to raise a doubt as to whether A1 really saw him since A1 claims it was in the night and it was about to rain. A1 insisted that A3 was the person he saw. A1 and A3 clearly know each other even before they were arrested. A3 admitted that he knows A1 and knows his house when he was cross-examined by the prosecution. It is therefore very likely that A1 can identify A3 even at night A1. In the absence of contrary evidence, the court believes that A3 was the person A1 saw standing on the table close to the complainant's store and receiving items from his accomplice on top of the roof of the store. A3 stated that on 22<sup>nd</sup> June 2022 when the Complainant's shop was broken into, he was in the house at Fongni. Despite this averment, A3 could not adduce any evidence or call any witnesses to confirm that at the time the incident happened he was in the house.

## **CASE OF A4**

The case of A4 is that he lives in Walewale and is an electrician. He added that he repairs fans and does electrical wiring. According to A4, A6 came to his shop with his fan for it to be repaired. A4 stated that A6 did not have enough money to pay for the cost of repairing his fan and so, he decided to sell his phone to him. A4 avers that the phone was priced at GHS 500, and he bought it. A4 testified further that he suspected the phone he bought from A6 could be one of the stolen phones when he got information that some people went and broke into a shop and stole phones. According to A4, he told his brother, and his brother asked him to return the phone to the person he bought it from because it may be one of the stolen phones. He avers that after attempts to call

A6 on phone proved futile, he decided to visit his house. He stated that A6 was not in the house when he got there so he gave the phone to A6's mother. According to A4 he then sent a text message to A6 that he has given the phone to his mother because he does not want any trouble. He added that A6 replied to his message that he should call him later, but he never called him. He concluded by saying he was not arrested with the phone on him.

## **CASE OF A5**

A5 testified that he is a welder and lives in Kukuazugu in Walewale. He avers that A6 who is his friend called him and told him that he wants to sell his phone to enable him to go back to school. According to A5, he told A6 that he already has a phone, but his sister wants a phone. He testified that they agreed to meet so that he can inspect the phone and then bargain on the price. After they met, and he saw the phone he asked for the price and A6 said it was GHS 500. He agreed and bought the phone. He subsequently gave the phone to his sister who travelled to Kumasi with the phone. According to A5, he was subsequently taken to the police station by one Babano and when he got to the police station, he got to know that the phone was a stolen phone. A4 stated that he was asked to bring back the phone and so he called his sister on phone to bring back the phone and his sister sent the phone from Kumasi to Walewale. He then gave the phone to the police. According to A5, he did not know the phone was a stolen phone.

## **DEFINITION AND ELEMENTS OF OFFENCES**

### **STEALING**

**Section 124(1) of the Criminal Offences Act 1960 (Act 29)** states that *"A person who steals commits a second-degree felony."*

**Section 125 of the Criminal Offences Act 1960 (Act 29)** defines stealing as follows: *“A person steals who dishonestly appropriates a thing of which that person is not the owner.”*

From the definition of stealing as provided above, there are three essential elements that must be proved by the prosecution to successfully establish a charge of stealing against the accused person. The essential elements of the offence of stealing were enumerated in the case of **Lucien v Republic [1977] 1GLR 351** as follows:

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

**Section 122 of the Criminal Offences Act, 1960 (Act 29)** provides the acts which amount to the appropriation of a thing as follows:

#### **Section 122.**

##### **“Acts which amount to an appropriation**

- 1. An appropriation of a thing by a trustee means a dealing with the thing by the trustee, with the intent of depriving a beneficiary of the benefit of the right or interest in the thing, or in its value or proceeds, or a part of that thing.*
- 2. An 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.*
- 3. An intent to deprive can be constituted by an intent to appropriate the thing temporarily or for a particular use, if the intent is so to use or deal with the thing that it probably will be destroyed, or become useless or greatly injured or depreciated, or to restore it to the owner only by way of sale or exchange, or for reward, or in substitution for another thing to which that owner is otherwise entitled, or if it is pledged or pawned.*

4. *It is immaterial whether the act by which a thing is taken, obtained or dealt with*

*(a) is or is not a trespass or a conversion,*

*(b) is or is not in any manner unlawful other than by reason of its being done with a purpose of dishonest appropriation, and it is immaterial whether, before or at the time of doing the act, the accused person had or did not have possession, custody, or control of the thing."*

**Section 120 of the Criminal Offences Act, 1960 (Act 29)** makes provision for what amounts to dishonest appropriation:

## **Section 120.**

### **Dishonest appropriation**

1. *An appropriation of a thing is dishonest*

*a. if it is made with an intent to defraud, or*

*b. if it is made by a person without a claim of right, and with a knowledge or belief that the appropriation is without the consent of a person for whom that person is trustee or who is owner of the thing or that the appropriation would, if known to the other person, be without the consent of the other person.*

2. *It is not necessary, in order to constitute a dishonest appropriation of a thing, that the accused person should know who the owner of the thing is, but it suffices if the accused person has reason to know or believe that any other person, whether certain or uncertain, is interested in or entitled*

*to, that thing whether as owner in that person's right or by operation of law, or in any other manner; and a person so interested in or entitled to a thing is an owner of that thing for the purposes of the provisions of this Act relating to criminal misappropriations and frauds.*

3. *The general provisions of Part One with respect to consent, and with respect to the avoidance of consent by force, duress, incapacity, and otherwise, apply for the purposes of this section, except as is otherwise provided in this Chapter with respect to deceit.*

## DISHONESTLY RECEIVING

**Section 146 of the Criminal Offences Act, 1960 (Act 29)** provides that “*A person who dishonestly receives property which that person knows has been obtained or appropriated by a criminal offence punishable under this Chapter, commits a criminal offence and is liable to the same punishment as if that person had committed that criminal offence.*”

## CAUSING UNLAWFUL DAMAGE

**Section 172 of the Criminal Offences Act, 1960 (Act 29)** stipulates that:

172 (1) *Causing unlawful damage*

*A person who intentionally and unlawfully causes damage to any property*

(a) *To a value not exceeding one million cedis or without a pecuniary value, commits a misdemeanour,*

(b) *to a value exceeding one million cedis commits a second degree felony;*

The **Criminal Offences Act, 1960 (Act 29)** further goes on to explain in sections 172 to 175 that:

172 (2) *A person who intentionally and unlawfully causes damage to property in a manner which causes, is likely to cause, danger to life commits a first degree felony.*

(3) *For the purposes of this section, “property” means movable or immovable property.*

173. *Definition of damage*

*For the purposes of this Act, “damage” includes not only damage to the matter of a thing, but also an interruption in 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 rendered necessary in order to render the thing fit for the purposes for which it was used or maintained.*

174. *Explanation of unlawful damage*

(1) *A person does an act or causes 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, or*

(d) *in which that person is liable to be restrained by injunction or any other proceeding from doing that act or causing that event.*

(2) *It is immaterial whether a person accused of a criminal offence in respect of any premises, or a thing is or is not in possession or occupation of the premises or of that thing.*

(3) *A person who is interested jointly or in common with other persons in any premises or a thing as an owner or otherwise, or who as owner is a trustee for any other person, can commit a criminal offence punishable under the provisions referred to in subsection (1) by an act which is unlawful under this Chapter.*

- (4) *A person who is the sole beneficial owner of any premises or a thing can commit a criminal offence punishable under the provisions referred to in subsection (1) by an act done with intent to injure or defraud a person or to cause harm to a person although the act is not otherwise unlawful.*
- (5) *Despite anything contained in Part One as to mistake of law, a person is not liable to punishment in respect of doing a thing which that person in good faith, believes to be entitled to do.*

175. *Explanation as to amount of damage*

- (1) *Where an intention to cause damage to a certain amount, or a causing of damage to a certain amount, is required by a provision of this Act relating to unlawful damage, it is not necessary that the damage to that amount should be intended or done to an individual thing of a kind mentioned in this provision, but it suffices if damage to that amount in the aggregate is intended or done to a number or collection of those things.*
- (2) *Where different punishments are provided by a provision of this Act relating to unlawful damage, according to the differences in the amount of damage caused, a person who is accused of having attempted to cause damage to a greater amount shall not be acquitted or relieved from liability to the greater punishment on the ground that a lesser amount of damage was actually caused.*

## UNLAWFUL ENTRY

**Section 152 of the Criminal Offences Act, 1960 (Act 29)** states that “A person who unlawfully enters a building with the intention of committing a criminal offence in the building commits a second-degree



*felony” According to **section 153 of the Criminal Offences Act, 1960 (Act 29)** “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.”*

## **ANALYSIS OF FACT & LAW:**

### **COUNT ONE**

The prosecution charged A1 with the offence of stealing contrary to section 124(1) of Act 29 as stated supra. The elements of the offence of stealing which the prosecution is required to prove beyond a reasonable doubt in accordance with the definition of stealing as stipulated by section 125 of Act 29 are as follows:

- a) the person charged must not be the owner of the thing stolen
- b) he must have appropriated it and
- c) the appropriation must have been dishonest.

It is a fact that A1 took phones and chargers belonging to PW1, kept them for two weeks and even exchanged one with A2 for A2’s phone. He also sent four (4) of the phones to his friend in Gambaga when he got information that the police are looking for the culprits who broke into the store of PW1. In Exhibit A1 he made statements that clearly implicate him and point to the fact that he stole the phone. When he found the phones after chasing A3 and his accomplice away from PW1’s store, he did not see the need to find and return the phones and chargers to PW1. He rather took the phones away and dealt with them in a manner which indicates that he intended to deprive PW1 of the ownership of the phones and chargers. This amounts to the appropriation of the mobile phones and chargers which belonged to PW1. **See section 122(2) of Act 29.** A1 appropriated the mobile phones and chargers knowing very well that he was doing so without the consent of PW1 whether express or implied. **See section 120(b) of Act 29.**

From careful consideration of the evidence of the prosecution and the defence of A1, it is clear as day that A1 not being the owner of the mobile phones and chargers appropriated them dishonestly. The prosecution has therefore proven beyond a reasonable doubt all the elements of the offence of stealing contrary to section 124(1) of Act 29 against A1. A1 could not raise a reasonable doubt as to his guilt when the burden of proof shifted onto him.

I find A1 guilty of the offence of Stealing: contrary to **section 124(1) of the Criminal Offences Act, 1960 (Act 29)** and accordingly convict him of the offence.

### **COUNTS TWO, SIX AND SEVEN**

A2, A4 and A5 were charged with Dishonestly Receiving: contrary to section 146 of Act 29. The court will therefore deal with counts two, six and seven together under this section. To get a conviction of the Accused persons, the prosecution must prove beyond a reasonable doubt that the Accused persons dishonestly received the mobile phones knowing very well that the mobile phones had been obtained or appropriated by a criminal offence punishable under chapter one of part three of Act 29. Offences punishable under chapter one of part three of Act 29 include stealing.

The prosecution adduced evidence to establish that A2 received from A1 an Itel A58 which was one of the phones stolen from PW1's shop. A2 in his defence admitted that he received the phone from A1, but he did so by exchanging his Infinx smart 5 phone with A1 for the Itel A58.

A2 stated in his defence that he did not know that the phone was a stolen phone when he received it from A1. A2 cannot be found guilty of dishonestly receiving property if he did not know that the property was stolen. The burden was on the prosecution to adduce evidence to prove that A2 knew that the phone he received from A1 was stolen. Merely proving that A2 received the phone from A1 cannot lead to a conviction of A2. The prosecution failed to prove to the court beyond a reasonable doubt that A2 at the time he received the Itel A58 knew that it was obtained by stealing.

On count two, I find A2 **not guilty** of the offence of **Dishonestly Receiving: Contrary to section 146 of the Criminal Offences Act, 1960 (Act 29)**.

In respect of A4 and count six, just like A2, the prosecution was able to establish without a doubt that A4 received one of the stolen phones specifically a Tecno Spark 7 mobile phone from A6. This fact was not disputed by A4. The prosecution could not however prove beyond a reasonable doubt that A4 when he received the aforementioned mobile phone, knew it was obtained through stealing. A4 stated in his defence that he did not know at the time he received the phone from A6 that it was a stolen phone. According to him, he bought the said phone from A6. He also stated that when he realized that the phone, he bought from A6 may be a stolen phone he returned the phone to A6 by giving it to A6's mother in their house. The prosecution failed to prove all the elements of the offence beyond a reasonable doubt.

On count six, I find A4 **not guilty** of the offence of **Dishonestly Receiving: Contrary to section 146 of the Criminal Offences Act, 1960 (Act 29)**.

Lastly, regarding A5 and count seven, A5 stated in his defence that he bought the phone that is Tecno Spark 7 mobile phone from A6 for his sister and did not know that the phone was a stolen phone. According to him A6 told him that he was selling his phone to enable him to go back to school. A5 stated that he only got to know that the mobile phone was a stolen phone when he was sent to the police station. He added that upon request by the police, he got his sister to send the phone to him from Kumasi and he duly gave the phone to the police. Clearly, A5 admitted that he received the phone, which is a stolen phone from A6, but he insists that he was not aware it was stolen. The onus was on the prosecution to prove that he knew it was a stolen phone, but the prosecution failed to discharge this burden beyond a reasonable doubt. A5 has successfully raised doubt as to his guilt.

On count seven, I find A5 **not guilty** of the offence of **Dishonestly Receiving: Contrary to section 146 of the Criminal Offences Act, 1960 (Act 29)**.

COUNT THREE

A3 was charged with Causing Unlawful Damage: contrary to section 172 of the Criminal Offences Act 1960. For the prosecution to successfully prove its case against A3, the prosecution is required to prove beyond a reasonable doubt the following elements of the offence:

- a. That damage has been caused to a property
- b. That the damage was caused by A3,
- c. That the damage was caused by the A3 intentionally,
- d. That the damage was caused unlawfully to the property by A3 and
- e. The cost or value of the damage caused by the A3.

The prosecution's case against A3 is that A1 mentioned A3 as one of the persons who broke into PW1's store and stole the phones and accessories. This was clearly stated by A1 in Exhibit A1 which is the investigation caution statement of A1. A1 in his evidence-in-chief stated that on the night PW1's store was broken into, he saw A3 on a table receiving items from another person on the roof of PW1's store. A1 however did not identify the person on the roof. Exhibit B series show the nature and extent of damage caused to PW1's store. Once some evidence had come to light which indicates the guilt of A3, the burden of proof shifted to him to adduce evidence to raise doubt as to his guilt. A3 failed to do so in his defence or cross-examination of A1. A1 was very certain that it was A3 that he saw on that night. In such circumstances, the only conclusion that can be drawn is that A3 and his unknown accomplice damaged the roof of PW1's store intentionally and unlawfully. **See Ametewee v The State [1964] GLR 551.** From all the evidence on record the prosecution has therefore succeeded in proving beyond a reasonable doubt that A3 caused unlawful damage to PW1's store contrary to the provision of section 172 of Act 29.

I find A3 guilty of the offence of Causing Unlawful Damage: contrary to **section 172 of the Criminal Offences Act, 1960 (Act 29)** and he is accordingly convicted of the offence.

#### COUNT FOUR

The prosecution also charged A3 with the offence of Unlawful Entry: contrary to section 152 of Act 29. Considering all the evidence on record particularly the Exhibit A1 and testimony of A1, the

court concludes without a doubt that A3 and his unknown accomplice entered the store of PW1 without his consent with the intention to steal items from the store which they managed to do. The prosecution has therefore proved beyond a reasonable doubt that A3 unlawfully entered the store of PW1.

I find A3 guilty of the offence of Unlawful Entry: contrary to **section 152 of the Criminal Offences Act, 1960 (Act 29)** and he is accordingly convicted of the offence.

#### COUNT FIVE

A3 was charged with Stealing: contrary to section 124(1) of Act 29. A3 and his accomplice according to A1 stole the phones and chargers from PW1's store but they could not carry their booty away. A3 and his accomplice dropped the phones and chargers which were wrapped in a rag and ran away when A1 chased them with a cutlass. This means that A3 and his accomplice appropriated the phones and chargers of PW1 without his consent with the intention to deprive him of the ownership of the phones and chargers. It matters not that A3 and his accomplice after breaking into the store and taking the phones and chargers out of the store could not complete their mission by taking them away. They are still deemed under section 124(1) of Act 29 to have stolen the phones and chargers even though A1 has also been found to have stolen the same phones and chargers.

I find A3 guilty of the offence of Stealing: contrary to **section 124(1) of the Criminal Offences Act, 1960 (Act 29)** and he is accordingly convicted of the offence.

#### DISPOSITION/SENTENCE

The court in passing the sentence took into consideration the pleas for mitigation of A1 and A3, the plea of aggravation by the prosecution as well as the conduct of A1 and A3 during the whole trial.

#### COUNT ONE

The court hereby sentences A1 to pay a fine of 300 penalty units or in default serve a prison sentence of **eight (8) months in hard labour**.

#### COUNT TWO

I hereby acquit and discharge A2 of the offence of Dishonestly Receiving: Contrary to section 146 of the Criminal Offences Act, 1960 (Act 29).

#### COUNT THREE

The court hereby sentences A3 to pay a fine of 50 penalty units or in default serve a prison sentence of **three (3) months in hard labour**.

#### COUNT FOUR

The court hereby sentences A3 to pay a fine of 50 penalty units or in default serve a prison sentence of **two (2) months in hard labour**

#### COUNT FIVE

The court hereby sentences A3 to pay a fine of 200 penalty units or in default serve a prison sentence of **seven (7) months in hard labour**

A3 shall serve counts three, four and five cumulatively.

#### COUNT SIX

I hereby acquit and discharge A4 of the offence of Dishonestly Receiving: Contrary to section 146 of the Criminal Offences Act, 1960 (Act 29).

COUNT SEVEN

I hereby acquit and discharge the A5 of the offence of Dishonestly Receiving: Contrary to section 146 of the Criminal Offences Act, 1960 (Act 29).

The court hereby orders the Ghana Police Service, Walewale to release all the mobile phones and accessories retrieved from the accused persons to the rightful owner.

**SGD**

**H/W SIMON KOFI BEDIAKO**

**MAGISTRATE**

**06/02/2023**