

**IN THE DISTRICT COURT 2, TAMALE
HELD ON THURSDAY 30TH MARCH, 2023
BEFORE HIS WORSHIP D. ANNAN ESQ.**

SUIT No.: B7/24/22

THE REPUBLIC

V

ANDREWS PETER DAWUNI

JUDGMENT

INTRODUCTION

1. The accused, Andrews Peter Dawuni, was arraigned before this court on the offence of stealing, contrary to section 124(1) of Criminal Offences Act, 1960 (Act 29). The particulars of the charge stated that the accused “did steal documents and keys of Kalariga Goodnews Church, the property of Goodnews Bible Church, Ghana.”

FACTS OF THE CASE

2. The brief facts of the case as narrated by the prosecution are that the accused on 27th May, 2022 was excommunicated from the Fellowship of Good News Bible Churches, of which the accused was the pastor of the Kalariga Branch under the name Shalom

Church. Reason for the excommunication was that the accused had contravened the doctrines of the church by divorcing his wife and remarried without notice or consent of the church. Upon the excommunication, the accused forcibly took the church documents and keys and has failed to return them, despite several demands. Also, accused continues to hold himself as a pastor of the church. Failing to return the church documents and keys, a complaint was made to the police. Upon interrogation, accused promised to produce the documents and keys, but he has failed to do so. Accused was, therefore, charged and arraigned before this court on the above offence.

DEFINITION OF THE OFFENCE

3. Section 125 of Act 29 defines stealing to mean, “a person steals if he dishonestly appropriates a thing of which he is not the owner.” Act 29 also provides that whoever steals shall be guilty of a second degree felony, see s. 124(1) of Act 29.

4. Section 120 of Act 29 explains dishonest appropriation, to include

“120(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 claim of right, and with a knowledge or belief that the appropriation is without the consent of a person for whom he is trustee or that the appropriation would, if known to the other person, be without his consent of the other person.”

5. Also sections 122(1) and (2) of Act 29 provide instances or acts that amount to an appropriation:

“122(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 any part that thing.

122(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 person may be deprived of the benefit of the ownership of that thing, or of the benefit of his right or interest in the thing, or in its value or proceeds, or any part that thing."*

BURDEN OF PROOF

6. By a plea of not guilty, the accused puts himself in charge of the court, meaning that his guilt has to be proved beyond reasonable doubt. The mandatory requirement that the guilt of the person charged ought to be established beyond reasonable doubt and the burden of persuasion on the party claiming that the person was guilty, has been provided for in ss. 11(2), 13(1), 15 and 22 of Evidence Act, 1975 (NRCD 323). Significantly, whereas the prosecution carries that burden to prove the guilt of the accused beyond reasonable doubt, there is no such burden on accused to prove his innocence. At best, he can only raise a doubt in the case of the prosecution. This doubt must be real and not fanciful, see the cases of **Miller v Minister Of Pensions [1947] 2 ALL ER 372 at 374**, **COP v Isaac Antwi [1961] GLR 408** and **Gligah & Atiso v The Republic [2010] SCGLR 870**.

METHODOLOGY

7. With accused pleading not guilty to the charge of stealing, it is settled law that the prosecution must prove the whole of its case against accused, beyond reasonable doubt.

8. The prosecution in support of its case called four witnesses: Pastor Fuseini Fawatu (PW1), complainant Rev. Dr. Yakubu Abukari (PW2), Mr. Jacob Imoro (PW3) and No. 6911 D/Cpl. Janice Aboagye (PW4). Prosecution also tendered in evidence:

Exhibit A – Investigation cautioned statement of accused dated 27/06/22

Exhibit B – Charged cautioned statement dated 5/07/22

Exhibit C – Copy of the Application for 99yr Lease for the Vittin North Block

B, Residential Area Plot No. 6, signed by PW1, dated 1/3/13

together with a site plan

Exhibit D – Copy of the Excommunication letter dated 27/5/22

Exhibit E – Report of the NEC with Tamale DCC and NRCC held on 19/4/22

at Vittin, Tamale

Exhibits F & F1 – Pictures of the church building.

Exhibit G – Copy of Letter of Notification by Shalom Good News Church dated

1/7/22 notifying the General Overseer of its separation from the FGNBC

Exhibit H – Copy of Poster

Exhibit J – Copy of BCA Constitution

The Prosecution's Case

9. The evidence of PW1, Pastor Fuseini Fawatu, stated that the accused was a leader of the Shalom Church, Kalariga Branch, Tamale. He added that the accused divorced the wife against the counsel of the national church. Hence, on 27/5/22 accused was excommunicated and was instructed to hand over all church documents and properties, but accused failed to do so. When accused was reported to the police, PW1 averred that accused promised to deliver the documents and keys but accused sent the wrong documents and has since failed to hand over the church document and keys. He explained that Shalom Good News Bible Church, Kalariga is the same as

Shalom Church, Kalariga and this church is a branch of the Fellowship of Good News Bible Churches (FGNBC), previously known as Bible Church of Africa (BCA).

10. The evidence of PW2, Dr. Abukari Sayibu Yakubu is similar to that of PW1. He stated that he is the General Overseer of the Fellowship of Good News Bible Churches.

11. PW3, Jacob Imoro, averred that in 1997 he was asked by one white missionary, Rev. Dooshik Jang, to assist in setting up the Shalom Church. Later, PW1 joined. Subsequently, accused and his relations (brothers Andrews and Simon and their mother) also joined. PW3 added that he led Rev. Jang to his late father, Imoro Sugri, the then Zoo-Naa of Kalariga who gave Rev. Jang two plots of lands for the church. He stated that the missionary in appreciation gave his father GHS70.00. Later, Rev. Jang requested for additional two plots and same was given by the father. He (PW3) received a Yamaha motorbike in return. He stated further that Rev. Jang had in his possession the land documents.

12. PW4, D/Cpl. Janice Aboagye, indicated that she investigated the matter and charged the accused person with the said offence.

13. At the end of the prosecution's case, the court found that a prima facie case had been established against accused person and therefore called upon him to open his defence.

Accused's Defence

14. On 23/2/23 the accused filed a witness statement. In his evidence, he stated that he is a pastor of Kalariga Church, now Shalom Church, Kalariga. He added that the land documents and keys of Shalom Church were in his possession as a pastor and that he held them for and on behalf of the church. However, due to this case, he has handed

it over to the Tamale Bugulana, for his intervention or attempted settlement. He contended that the prosecution is aware that the said keys and land documents are with the Bugulana, yet prosecution will go ahead to charge him with the offence of stealing.

15. I must point out here that the civil aspect of this case is pending before the High Court.

Sometime in December, 2022 a member of the Shalom Church also applied to this court for an order to compel the Bugulana to release the keys in order for them to worship during the Christmas festivities. The application, however, was not granted. Let me keep to this present action and not be swayed into the other matters.

16. Accused in his evidence further evinced the history of Shalom Church to which he maintains that the church is an independent, separate and distinct church from the churches under Good News Bible Church of Ghana and that the keys and land documents belongs to Shalom Church and no other organisation or entity. He indicated that he joined the Shalom Church in 1994 at which time the church was known as Kalariga Church. Through dint of hard work he was appointed a pastor in 1997.

17. He tendered in evidence Exhibit 1 in which he contended that the Shalom Church used to worship under a big tree and through the efforts Rev. Jang the church was granted 4 pieces of plots by the Zoo-Naa. He added that it was Rev. Jang who paid for the land, sometime in 1998. Exhibit 1 series show a picture of the structure of the church in which Rev. Jang, accused and chairman of the church are arrowed. Exhibits 2 series are copies of the land documents, after a new layout was done in the area. Accused stated that during that time, around year 2000, the church had affiliated with the Bible Church of Africa and so the documents were issued in the name of Bible

Church of Africa. He added that the District Chairman, Tanko Rashid, assured the members of the Shalom Church that although it was affiliated to Bible Church of Africa, the Shalom Church remained a separate entity. Exhibits 3, 4, 5 series and 6 are pictures of the construction, roofing and painting of the church building in which accused indicated he was the mason and involved in building it. Exhibit 7 is receipt for the padlock, to which keys are in contention. Exhibits 8 and 9 series are copies of receipts and invoices covering some of the materials used in building the church and the fence wire, respectively. Exhibit 10 is a letter from Rev. Jang to the Guma-Naa indicating he bought the plots. Exhibit 11 is a copy of the BCA's constitution (typed-setting version).

18. Accused did not call any witness.

Court Exhibit

19. The prosecution and defence kept referring to the constitution of Bible Church of Africa. Meanwhile, the evidence point to an existence of a new constitution after the change of name from Bible Church of Africa to Fellowship of Good News Bible Churches. As a result, the court had tendered in evidence Exhibit CW1 being a copy of the constitution of Fellowship of Good News Bible Churches.

ANALYSIS OF FACTS AND LAW

20. In the case, **Brobbey & Ors. v The Republic [1982-83] GLR 608**, the essential elements to be proved by prosecution in respect of the charge of stealing were stated as (a) the person charged must have appropriated the thing allegedly stolen, (b) the appropriation must be dishonest and (c) the person charged must not be the owner of the thing allegedly stolen. See also the case **Lucien v The Republic [1977] 1 GLR 351-**

359, CA. It, therefore, means that a person could not be guilty of stealing unless he was proved to have appropriated the thing in the first place. In **Ampah & Anor. v The Republic [1976] 1 GLR 403**, the court defined stealing to include, ...(b) where the appropriation was made without a claim of right and without the consent of the owner...'. Sections 122(1) and (2) of Act 29 provide instances or acts that amount to an appropriation:

“122(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 any part that thing.*

122(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 person may be deprived of the benefit of the ownership of that thing, or of the benefit of his right or interest in the thing, or in its value or proceeds, or any part that thing.”*

21. Now, I shall look at one of the essential ingredients which must be proved by the prosecution. Thus, in the case of stealing, prosecution must prove that the accused is not the owner of the thing appropriated or that as a trustee he a dealing with the thing in such a manner or with the intent of depriving the beneficiary of the benefit of the right or interest in the thing, or in its value or proceeds, or any part of that thing, see **Brobbey & Ors. v The Republic (supra)** and ss. 120 and 122 of Act 29 (supra).

22. From the evidence, the prosecution’s case, in brief, is that the land documents and the keys of Shalom Church belong to the mother church, Bible Church of Africa now Fellowship of Good News Bible Churches. Prosecution argued that the land documents in question are in the name of Bible Church of Africa. Therefore, upon the

excommunication of the accused, accused was to hand them over. Hence, accused person's refusal to hand them over amounts to an appropriation. Moreso, the Shalom Church does not belong to the accused.

23. Accused contended that he was under the pressure of the police to give up the said keys and the land documents, the properties of the church he was pastoring. He stated further that the said keys and land documents were forwarded to the Bugulana of Tamale for customary arbitration. Accused maintained that Shalom Church is a separate entity built and owned by its members and that despite it been affiliated to or member of Fellowship of Good News Bible Churches, Shalom Church does not belong to the said Fellowship. He argued that his actions are to protect the property of Shalom Church and is not intended to deprive the church benefit of the ownership or interest of the said items.

24. Affiliate, according to the online *Wordweb Dictionary* means to '(v) officially attach or connect (a subsidiary group or a person) to an organisation' or '(n) a person or organisation officially attached to a larger body'. Membership is also defined to include, 'anything that belongs to a set or class' or 'an organization that is a member of another organisation.' In explaining affiliation or membership, I shall look at the constitution of the Fellowship of Good News Bible Churches, Exhibit CW1. Exhibit J is a copy of the Constitution of Bible Church of Africa tendered by the Prosecution. Exhibit 11 is a similar copy, but it is a typed-setting copy. I will rely on Exhibits CW1 and J since they are signed and stamped. That of Exhibit 11 is not. Moreso, Exhibit CW1 is the new constitution. I will, however, compare the provisions of the various constitutions.

25. Exhibit J, does not have provisions on affiliations. Article 14A of Exhibit 11 is captioned, *Affiliations*. It provides that, “It is the intent of BCA to associate with other national and international bodies of like faith and practice. It is no[t] the intent of the BCA to join with those who deny the fundamentals of our faith or who do not practice Christian separation from the world.” This provision is similar to article 35 of Exhibit CW1. In my opinion, this provision does not relate to local affiliation like Shalom Church or the other branches of BCA or FGNBC.

26. Article 5 captioned, *Membership in Good News Bible Church*, of Exhibit CW1 provides that:

- 5.1 Churches established by GNBC missionaries, evangelists, members or in partnership with SIM missionaries shall be known by the name Good News Bible Church and this constitution shall be binding on them.
- 5.2 Membership within GNBC will be open to any church which:
 - 5.2.1 Calls itself Good News Bible Church or its vernacular equivalent
 - 5.2.2 Accepts this constitution as binding upon it

27. The above provision is similar in Exhibit J and Exhibit 11. Article 4 of Exhibit J and article 5A of Exhibit 11 under the caption, *Membership of BCA*, which state that:

- “Membership within BCA will be opened to any church which:
- 1. Calls itself the Bible Church of Africa of (District Name) or its vernacular equivalent
 - 2. Accepts this constitution as binding upon it; and
 - 3. Upon formal application to the National Church Council (NCC) through a District Council (DCC) is accepted by a $\frac{3}{4}$ majority of the NCC.”

28. Also, article 12 of Exhibit J captioned, *Local Church*, is similar to article 5C of BCA's Bye-Laws of Exhibit 11. Article 12 of Exhibit J states:

- "1(a) Each local church is under the authority of the DCC and NCC of this constitution. *That is, the local church is NOT independent in its government.* The elders, DCC and NCC are responsible for oversight and direction of the local churches.
- 1(b) Each local church is obligated to subscribe to the terms of the constitution.
- 1(c) No decision or regulation shall be made by any local church affecting other churches, DCC, NCC, other denominations or the government.
- 1(d) Each local church is required to participate in the activities of the DCC and the NCC."

29. Article 23 of Exhibit CW1, however, provides a similar and an extensive provisions on the Local Church, Creation of the Local Church, Responsibilities of the Local Church, Membership, Transfer and Termination of Membership.

30. Subclause 1C of article 5C of BCA's Bye-Laws, of Exhibit 11, however, has a modification as compared to article 12 of Exhibit J and article 23 of Exhibit CW1. It provides that, *"Each local church is autonomous within the limits of this constitution. That is the local church is independent in its government. The elders, not DCC or NCC, are responsible for oversight and direction of the Local Church, however, as members of the BCA."* Accused explained that per this provision, Shalom Church which existed before 1992 and joined BCA later in 2000, BCA does not have control over it. Hence, BCA now FGNBC does not have the right to ex-communicate him or have any right over the properties of Shalom Church. As a result, the District Church Council (DCC) of Shalom Church wrote Exhibit G to Fellowship of Good News Bible Churches and stated that Shalom Church from, '1st July, 2022, *stands as independent church and free*

from your leadership and role.' In the said letter, the secretary Augustine Peter Dawuni, stated further, *"We want to state it clear that there is no property of Fellowship of Good News Bible Churches or its organs (NRCC and DCC) in our Kalariga Church. Properties in the church were obtained through individual donations and contributions. Also, properties labelled as BCA, SGBC and GNBC belong to the Kalariga Church for it was labeled voluntary and not as a property bought by the brand/label name stated above."* This letter according to prosecution is on the letterhead of Shalom Good News Church, Kalariga and that same is dated 1/7/22 which was issued after this case had been instituted. To prosecution, Shalom Church, Kalariga Church, Shalom Good News Bible Church are all the same affiliated to or member of Fellowship of Good News Bible Churches, previously BCA. As mentioned earlier, I prefer Exhibits CW1 and J to Exhibit 11. Article 30(2) of Exhibit CW1 captioned, *Properties*, provides that, *'...where a local church has acquired a moveable or immovable property or asset prior to it becoming a member of GNBC, such property shall be vested and registered in the names of the Trustees (of GNBC) and the Church.'* Hence, I find the arguments of accused improbable, see **Amarthey v The State [1964] GLR 256 @ 295, SC.**

31. From the evidence, I also find that the land documents, Exhibits C and 2 series, the documents bear the names, 'Good News Church' or 'BCA'. Moreso, Exhibit H, the poster with the picture of accused, I find that the accused is the pastor of Shalom Good News Bible Church, for the name of the church is written under his picture and name. Further in Exhibit 10, accused averred that Rev. Jang bought the plots of land for Kalariga Church. It is interesting to point out that the said Exhibit 10 also made reference to Kalariga BCA. It states, *"Because I bought them for Kalariga Church, that is presently Shalom Church, the name Kalariga BCA was written on the allocation letter."* From the evidence, prosecution evinced that Rev. Jang was a member of Serving in Mission (SIM) which is also part of BCA now FGNBC. If so, then the land acquired by Rev.

Jang and issued in the name of Kalariga BCA, I am of the view that he meant it for the Kalariga Church which is part of the BCA and subject to the constitution of BCA thereof. See article 5 of Exhibit CW1. Again, it was the same Board of Shalom Church that through its District Chairman, Rashid Tanko, caused the land to be registered in the name of BCA, see Exhibit 2A. With respect to the keys, Exhibit 9 the receipt of the padlock refers to "Shalom Church Kalariga". As noted earlier, Shalom Church, Kalariga Church and Shalom Good News Church is the same entity. Hence, mathematically, the keys belongs to the Shalom Church which is a member of the Fellowship of Good News Bible Churches. Lastly, Exhibit D, the ex-communication letter is also on the letterhead of Fellowship of Good News Bible Churches. In sum, I hold that accused cannot hold himself as a pastor of the Shalom Church or seeking to be the protector of the properties of Shalom Church but not affected by the decisions of Fellowship of Good News Bible Churches since Shalom Church is a member thereof.

32. It is also clear from the evidence that the Shalom Church is presently under lock and key. There is no church service in the said structure. All the properties or items used for church service have been locked and the keys handed over to the Bugulana by the accused. As accused stated, the church members presently worship in a classroom block. From article 30(2) of Exhibit CW1 (supra) it suffices, therefore, that once the local church affiliates or joins the Fellowship of Good News Bible Churches, the church is bound by this constitution. Shalom Church cannot say it is a member of Fellowship of Good News Bible Churches in one breath and in another say it is not bound by the Exhibit CW1, thereof.

33. On the totality of the evidence, I find that prosecution has led sufficient evidence in proof beyond reasonable doubt that accused has appropriated the land documents

and keys of Shalom Church which is a member of Fellowship of Good News Bible Churches. Accused cannot purport to be a member of the Fellowship and not be bound by its decisions. Presently, he is ex-communicated from the church and therefore should not hold himself as one, let alone to be the protector of the church. If he has issues with the ex-communication, Exhibit CW1 provides how to deal with that. Also, the decision of Shalom Church to hold itself as separate from Fellowship of Good News Bible Churches as at 1/7/22 is an afterthought and same shall not be countenanced by this court. See also articles 17 and 30 of Exhibits J and CW1, respectively. The accused is accordingly enjoined by the constitution of BCA, now FGNBC. In effect, accused is convicted of the offence of stealing, contrary to section 124(1) of Act 29.

PRE-SENTENCING HEARING

34. Having heard counsel for the accused and prosecution on mitigation, see pages 212-213 of the Record of Proceedings, I note that the accused is a first time offender. Also, this case involves the leadership of the church and presently it is the members who are affected. In the circumstance, I hereby caution and discharge the accused. The accused shall cease, forthwith, to hold himself as a pastor of the Shalom Church. He should also have nothing to do with the said land documents and keys. Accordingly, the Bulgulana is to hand over the keys and land documents to the Fellowship of Good News Bible Churches.

CONCLUSION

35. Accused is hereby convicted of the offence of stealing, contrary to section 124(1) of Act 29. Accused, however, is cautioned and discharged. The accused shall cease, forthwith, to hold himself as a pastor of the Shalom Church. He should also have

nothing to do with the said land documents and keys. Accordingly, the Bulgulana is to hand over the keys and land documents to the Fellowship of Good News Bible Churches.

H/W D. ANNAN ESQ.

[MAGISTRATE]

INSP. A. R. DAWUD FOR THE REPUBLIC

DAJIAH J. IDDRISSU ESQ. FOR THE ACCUSED

References:

1. ss. 11(2), 13(1), 15 and 22 of Evidence Act, 1975 (NRCD 323)
2. ss. 120, 122, 124(1) and 125 of the Criminal Offences Act 1960 (Act 29)
3. *Miller v Minister Of Pensions* [1947] 2 ALL ER 372 at 374
4. *COP v Isaac Antwi* [1961] GLR 408
5. *Gligah & Atiso v The Republic* [2010] SCGLR 870
6. *Brobbey & Ors. v The Republic* [1982-83] GLR 608
7. *Lucien v The Republic* [1977] 1 GLR 351-359, CA
8. *Ampah & Anor. v The Republic* [1976] 1 GLR 403
9. *Amartey v The State* [1964] GLR 256 @ 295, SC.