

IN THE DISTRICT COURT HELD AT DAMBAI BEFORE HIS WORSHIP  
ALHASSAN DRAMANI ESQ ON TUESDAY, 14<sup>TH</sup> FEBRUARY, 2023

CASE NO: 7/46/2023

THE REPUBLIC

VRS

DONKOR KWAME

---

ACCUSED PERSON PRESENT

COMPLAINANT PRESENT

C/INSPECTOR LAWRENCE ADDO FOR THE PROSECUTION PRESENT

---

### JUDGEMENT

The accused person was arraigned before this Court on the 13<sup>th</sup> July, 2022 charged with the offence of stealing contrary to section 124(1) of the Criminal and Other Offences Act, 1960 (Act 29).

The accused persons pleaded not guilty after the charge had been read out and explained to him for which reason the prosecution assumed the burden of proof and must prove the charge against the accused person beyond reasonable doubt.

### FACTS OF THE CASE

The facts of the case as presented by the prosecution were that, the Complainant is a farmer and a welder whilst the accused person is a farmer and both reside at Tokuroano-Lotri. For some time now the complainant has been detecting series of theft of tubers of yam from his farm. On the 8<sup>th</sup> July, 2022 at about 4:00pm, the complainant visited his farm and realised that someone had freshly dug out eight tubers of yam from his yam mounds. The complainant decided to follow the footprints of the person leading to the town and through that he spotted the accused person carrying a sack with tubers of yam and heading to his house. The complainant immediately suspected the accused and decided to lay surveillance on him. Later the complainant and his friends spotted the accused person attempting to sell the yam to one Madam Doris. The complainant confronted the accused and the accused admitted having stolen the yam from complainant's farm. The accused person was arrested and handed over to the police. The accused admitted the offence in his caution statement to the police. After investigation he was charged and arraigned before this court.

### **THE CASE OF THE PROSECUTION**

**PW1** (complainant) confirmed the facts as presented by the prosecution.

**PW2** in his witness statement indicated that for some time now PW1 has been complaining to him that thieves have been stealing yam from his farm. PW2 said on 08/07/2022 at about 4:30pm he was in his shop at Tokuroano when the complainant came to inform him that he suspect the accused to be the culprit in the series of theft from his farm. According to PW2 he was further told by PW1 that he (PW1) visited his farm and realised that eight (8) tubers of yam had just been dug from the yam mounds by an unknown person. PW2 stated further that PW1 then told him that when he (PW1) left his farm heading home he saw the accused carrying a sack containing some tubers of yam and he strongly suspect that, it was his yam the accused was carrying away. PW2 added that he together with complainant trailed the accused person and eventually saw him attempting to sell the yam to one Doris so they rushed on him and the accused upon

seeing them attempted to run away but they quickly rushed on him and got him arrested. According to PW2 whilst taking him to the police station he admitted the offence and pleaded with them for forgiveness.

**PW3** told the court that on the 08/07/2022 at about 4:30pm he received a phone call from the complainant indicating that someone had stolen some tubers of yam from his farm and that he suspected the accused to be the thief. According to PW3 he followed up to assist the complainant search for the thief but on his way he realised that the accused had already been arrested by the complainant and PW2 so he joined them to send accused to the police station. PW3 stated that on their way, the accused confessed to them that he indeed stole the yam from complainant's farm and pleaded with them for forgiveness.

**PW4** (investigator) tendered in evidence the cautioned and charge statements of the accused person marked as exhibits "A and B" respectively without objection.

Thereafter, the prosecution closed its case.

### **THE CASE OF THE DEFENCE**

The accused person testified under oath himself and called no witness.

In opening his defence, the accused told the court that, he is a farmer and lives at Tokuroano. The accused said the charge levelled against him is false. According to the accused the tubers of yam the police has accused him of stealing belongs to him. He stated that on 08/07/2022 he went to his farm and dug seven tubers of "puna" and three tubas of "water" yam and sent same to the house of one Madam Doris to sell to her. The accused added that when he got to the house of Madam Doris, he was told that Doris was eating so he was waiting outside the house when two gentlemen in the company of the complainant approached him and informed him that someone had stolen some yam from the complainant's farm and that they suspected him to be the thief. The accused said he was asked by the three gentlemen to follow them to the police station but he told them to rather follow him to his farm so that he will show them where he dug the yam from but

they insisted that he follow them to the police station, so he went with them. The accused stated that he was subsequently handed over to the police and the police detained him. The accused denied ever being taken to his farm or the complainant's farm by the police in the course of the investigation. He also said he did not recollect making a statement to the police.

After his evidence the accused claimed he had one witness to call. At his instance this case was adjourned on four occasions for him to call his witness. The accused however, eventually failed to do so and announced the closure of his case to the court after the fifth adjournment.

The legal issue to be determined by this court is:

Whether the accused person dishonestly appropriated the complainant's eight (8) tubers of yam valued at GH¢150. 00.

The accused having pleaded not guilty to the charge thereby putting himself in charge of the Court for his guilt to be proved beyond reasonable doubt.

It has been the common law rule that a person is presumed innocent until the contrary was proved or he pleaded guilty. This legal principle has also been given prominent place in Article 19(2) (c) of the 1992 Constitution which provides that;

“(2) A person charged with a criminal offence shall...

(c) be presumed to be innocent until he is proved or has pleaded guilty.”

The mandatory requirement that the guilt of the charged ought to be established beyond reasonable doubt and the burden of persuasion on the party claiming that a person was guilty, has been provided for in section 13 and 15 of the Evidence Act, 1975 (NRCD) 323

### **“13 proof of crime**

(1) In 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.”

### **“15. Burden of persuasion in particular cases**

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”.

Worthy of note is that, whereas the prosecution is under the burden to prove the guilt of the accused beyond reasonable doubt, the accused has little or no such burden on him to prove his innocence. All that the accused may do is to only raise a doubt in the case of prosecution.

The cardinal rule in all criminal proceedings is that the burden of establishing the guilt of the accused person is on the prosecution; and the standard of proof required by the prosecution should be proof beyond reasonable doubt as provided in the **Evidence Act, 1975 (NRCD 323), sections 11(2) and 13 (1)**, supra and also as was stated in the case of **Donkor v. The State [1964] GLR 598.**

In **The Republic v Kwabena Amaning © Tagor & Anor (Crim. Div. A.D. 24/07/2007 unreported)** the Court of Appeal held, inter alia, that the requirement that a charge against an accused person must be proved beyond reasonable doubt is the sole prerogative of the prosecution. The accused does not contribute in any way to it and the prosecution is supposed to do that by the close of its case.

**Section 125 of Act 29** provides:

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

In the case of **Brobbeey & Others v. The Republic [1982-83] GLR pgs 608-616,** Twumasi J. stated as follows:

“Three essential elements of the offence of stealing become obvious and they are:

(1) That the person charged must have appropriated the thing allegedly stolen.

(2) That the appropriation must have been dishonest.

(3) That the person charged must not be the owner of the thing allegedly stolen.”

From the above, it is incumbent on the prosecution to show that the accused person appropriated the complainant’s tubers of yam.

In the case of **Salifu v. The Republic [1974] 2 GLR 291**, Ata-Bedu J stated and I quote:

“There is no doubt that the crucial ingredient or element in a charge of stealing is dishonest appropriation”.

**Section 120(1) of Act 29** provides:

“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”.

After the trial, I made the following findings and observations:

1. The accused person denied throughout the trial that he stole the complainant’s eight tubers of yam valued the sum of GH¢150.00.
2. From the facts of the case as presented by the prosecution, and the evidence of the witnesses, no one saw the accused in the complainant’s farm and/or saw the accused stealing the complainant’s yam.
3. The arrest of the accused was based on suspicion after he was seen carrying a sack containing some yams.

From the record, the evidence of the witnesses particularly PW2 and PW3 can safely be described as hearsay since they were only told by the complainant that the accused had

stolen his yam. Hearsay evidence generally is inadmissible under section **117 of the evidence Act, 1975 (NRCD) 323.**

It is however significant to state, that even though the accused denied making a statement to the police, both his caution and charged statements complied with section **120 of the evidence Act, 1975 (NRCD) 323.**

In his caution statement dated 08/07/2022 the accused stated as follows:

“I am a farmer residing at Tokuroano Lotri. I want to state that it is true that I stole those yam from the complainant’s farm. Today 08/07/2022, one Salisu, told me that, he needed labourer to work on his farm. I went and he showed me the work I will be doing. At about 4:00pm, I was returning home and on the way, I branched to the complainant’s yam farm and harvested those yams. I want to plead with the police for forgiveness and this will not happen again.”

In his charged statement submitted to the police on the 10<sup>th</sup> of July, 2022, the accused stated thus “I rely on the caution statement submitted to the police on the 8<sup>th</sup> of July, 2022.”

Interestingly however in his evidence in chief given on the 7<sup>th</sup> of December, 2022, the accused gave a different account of what happened on the 08/07/2022. He stated as follows:

“...I am a farmer and lives at Tokuroano. The charge levelled against me by the police is false. The tubers of yam the police has accused me of stealing belongs to me. On 08/07/2022 I went to my farm and dug seven tubers of “puna” and three tubas of “water” yam and sent same to the house of one Madam Doris to sell to her. When I got to the house of Madam Doris, I was told that Doris was eating so I was waiting outside the house when two gentlemen in the company of the complainant approached me and informed me that someone had stolen some yam from the complainant’s farm and that

they suspected me to be the thief. I was then asked by the three gentlemen to follow them to the police station I suggested to them to rather follow me to my farm so that I will show them where I dug the yam from but they insisted that I follow them to the police station, so I went with them. I was subsequently handed over to the police and the police detained me. I was never taking to my farm nor the complainant's farm by the police in the course of the investigation."

The above account by the accused and the content of his caution and charge statements (supra) are clearly in sharp contrast with each other. Whilst he made admission in his caution statement that he indeed stole the yam from complainant's farm, his evidence in court is a straight denial of the offence.

In **State v Otchere [1963] 2 GLR 463**, it was held that a witness whose evidence on oath is contradictory of previous statement made by him whether sworn or unsworn, is not worthy of credit. Such evidence cannot, therefore, be regarded as being of any importance in the light of the previous contradictory statement, unless the witness is able to give a reasonable explanation for the contradiction.

Again in **Bour v The State [1965] 1, GLR THE SC,** it was held that "if a witness has previously said or written something contrary to what he had testified at the trial, his evidence should not be given much weight."

For the above reasons I will consciously reject the evidence of the accused person as same is full of fabrications and afterthought.

It is worth noting that the complainant testified that the accused admitted the offence when he was arrested by him and PW2. In fact, both PW2 and PW3 corroborated complainant's account. Even though the accused cross-examined all the witnesses above stated, he did not challenge them on the above assertion by them.

In the case of **Fori v Ayirebi [1966] GLR 627**, the Supreme Court held that if the party fails to cross-examine his opponent or his witness whilst the opponent or the witness is



in the box and he has the opportunity to react to his opponent's case, the court should not attach much weight to the evidence that the party later gives on that particular issue after the opponent or his witness has left the witness-box.

Also in the case of **Quagraine v Adams [1981] GLR 599**, CA, it was held that where a party makes an averment and his opponent fails to cross examine on it, the opponent will be deemed to have acknowledged, sub silentio, that averment by the failure to cross-examine.

In the present case the accused has failed to cross examined both the complainant and his witnesses on the vex issue of whether he made an admission to them that he stole the yam from the complainant's farm.

From the foregoing I find that the accused indeed admitted in the presence of the witnesses that he stole the yam from the complainant's farm.

When the accused came under cross examination by the prosecutor on the 7<sup>th</sup> day of December, 2022 he further made fundamental and material contradictions to his own case which are highlighted below:

Q. I put it to you that when the police arrested you, you initially claimed you dug the yam from your farm but when the police probe further and asked you to take them to your farm you refused to do so.

A. That is true and it is because I had earlier suggested to the complainant and his brothers to let us go to my farm, for me to show them where I dug the yam from and they refused but instead handed me over to the police. That was why I also refused to take the police to my farm.

Q. Do you remember telling this court that the police neither took you to your farm nor the complainant's farm?

A. I never said so

Q. I put it to you that you told this court in your evidence in chief that the police neither took you to your farm nor the complainant's farm as part of their investigation.

A. I disagree with you.

Q. Do you remember that when you were taken to the complainant's farm, you asked the complainant to identify to you the mounds from which the yam was dug from?

A. That is not true, it was rather the police who asked the complainant to identify to them the mounds from where the yam was dug from. I was only standing by.

Q. Why did you refused to enter the complainant's farm when the police took you there?

A. I am not the owner of the farm so I cannot just enter someone's farm like that.

Q. I put it to you that it was because you knew you would be exposed that was why you refused to enter the farm.

A. That is not correct.

From the above encounter, the accused has stated that he was taken to the complainant's farm by the police as part of their investigation. However, in his evidence in chief he categorically indicated that he was never taken to the plaintiff's farm by the police. He also stated that even though the police requested to take him to his farm for investigation he turned the invitation down.

The settled law is that a witness whose evidence on oath is contradictory of a previous statement made by him, whether sworn or unsworn is not worthy of credit and his evidence cannot be regarded as being of any importance in the light of his previous contradictory statement, unless he is able to give reasonable explanation: see **Gyabaah v The Republic [1984-86] 2 GLR 461**

In **Kuo-Den alias Sobti v The Republic [1989-90] 2 GLR 203 at 213**, the SC, held that material inconsistencies in the defence put by accused person provide sufficient justification for the defence being rejected.

From the entire evidence on record I find the evidence of the accused to be contradictory, inconsistent, and deceitful and thus not convincing enough to absolve him from the charge of stealing.

In the circumstances I am satisfied that the prosecution has succeeded in proving the guilt of the accused person beyond reasonable doubt, and so the accused person herein, **Donkor Kwame** is hereby convicted on the charge of stealing.

Q. Is the accused known?

A. No

Q. Accused do you have anything to say by way of mitigation before your sentence is passed

A. I am pleading with the court to have mercy on me. This will not happen again.

**BY COURT:**

In sentencing the accused the court has taken into consideration the fact that the accused is not known and has also pleaded for mitigation of his sentence. However the court has also taken into account the rising incidents of stealing within this jurisdiction. In the view of this court therefore, the accused deserve some punishment to serve as deterrent to others in this nefarious acts. In the circumstances the accused is hereby sentenced to a fine of 85 penalty units and in default serve four (4) months prison term.

.....  
**H/W ALHASSAN DRAMANI**  
**DISTRICT MAGISTRATE**  
**14<sup>TH</sup> FEBRUARY, 2023.**