

**IN THE DISTRICT COURT SITTING AT NALERIGU ON TUESDAY 7<sup>TH</sup> DAY OF SEPTEMBER  
2023 BEFORE H/W SIMON KOFI BEDIAKO ESQ – MAGISTRATE**

**SUIT NO. NR/NG/DC/65/23**

**THE REPUBLIC**

**VRS**

**ABDUL-WAHID ALIAS RAP WAY**

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**JUDGEMENT**

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**INTRODUCTION**

The Accused person herein, was arraigned before the court on 5<sup>th</sup> April 2023 charged with one count of **Stealing contrary to section 124(1) of the Criminal Offences Act, 1960 (Act 29)**.

**PLEA**

In accordance with **section 171 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30)**, after the charges had been read to him in Mampruli Language, the language of his choice, the Accused was called on to plead and he pleaded Not Guilty to the charge.

**DEFINITION AND ELEMENTS OF OFFENCE**

According to **Section 124(1) of the Criminal Offences Act 1960 (Act 29)** 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.*

## **BURDEN OF PROOF:**

The burden of proof is on the prosecution to prove its case against the Accused beyond a reasonable doubt in accordance with **Article 19(1) and (2) (c) of the 1992 Constitution of the Republic of Ghana** which 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.”*

## **THE CASE OF PROSECUTION**

**Facts of the case provided by prosecution:** The complainant Ali Ibrahim is a Public Servant at Gambaga whilst accused person Abdul Wahid Alias Rap Way is an unemployed resident in Gambaga. On 07/03/2023, the complainant was in town when he received a phone call from a neighbour that they heard some noise from his house, so he rushed to house, and upon reaching the house, he saw Issah Mohammed coming out from the house. He chased and arrested him but when he interrogated him, he informed the complainant that he went there to smoke cigarettes and he was allowed to go. The complainant later returned to the house and detected that the lights in his house were off. He called an electrician to check what was wrong and he was informed that the electric wires in the ceiling were cut off and taken away. The complainant reported the case at Gambaga Police station and pieces of electric wires were later retrieved from the ceiling. Issah Mohammed was arrested and in his caution statement, he admitted the offence and mentioned the accused person Abdul Wahid alias Rap Way as his accomplice. He was arrested. After investigation,

the accused person was charged with the offence on the charge sheet and arraigned before this Honourable court.

To discharge the burden of proof imposed on the prosecution, the prosecution called five (5) witnesses to testify in support of its case.

Issah Mohammed (**hereafter "PW1"**) testified that on 6<sup>th</sup> March 2023, he and the Accused went to the Complainant's house to case the house. After casing the house, they realised that there was nobody in the house. PW1 told the court that he climbed onto the ceiling of the house and cut the electrical wires of the house on the ceiling. He stated that the Accused stayed under the ceiling and received the wires he cut. PW1 testified further that they realized that they could not carry the electrical wires they cut away at that time, so they hid them. They went back to the Complainant's house on the same day at around 9-10 p.m. and conveyed the electrical wires they hid. According to PW1 they took the wires to a buyer in Gambaga and sold them. PW1 stated that the next day which is 7<sup>th</sup> March 2023 at around 2-3 p.m. he went back to the Complainant's house alone, while he was there, he heard some noise, so he escaped. He stated that he met the Complainant when he was running away, and he returned to the uncompleted house with the Complainant. According to PW1, when he was interrogated by the Complainant and some other people, he told them he only went there to smoke cigarettes and they let him go. He concluded that he was subsequently arrested when the Complainant discovered that electrical wires had been stolen from his house. According to PW1 when he was arrested, he gave a statement and, in that statement, he mentioned the Accused as his accomplice. The said statement was tendered and admitted in evidence as Exhibit A.

The Complainant, Ali Ibrahim testified as the second witness of the prosecution (**hereafter 'PW2'**). He testified that he is a Public Servant at Gambaga. According to PW2 on 7<sup>th</sup> March 2023, while he was in town, he received a call from a neighbour that they heard some noise coming from his house, so he went there to check it out. He testified that when he got there, he saw PW1 coming out of the

house. He stated that he chased and arrested PW1, but he let him go after interrogating him because PW1 told him he went into the house to smoke cigarettes.

According to PW2, he subsequently discovered that the electrical wires in the ceiling of the house had been stolen and so he reported the matter to the police. He subsequently identified PW1 to the police and he was arrested.

The prosecution's third witness is the police investigator by name No. 57610 G/Const. Baketey Elisha ("hereafter PW3"). He testified that on 9<sup>th</sup> March 2023, PW2 reported to the police that on 7<sup>th</sup> March 2023, electrical wires which had been installed in the ceiling of his uncompleted house were stolen and he suspected PW1 to be the person who stole them. According to PW3 he visited the scene and retrieved some pieces of cut electrical wires in the ceiling. He testified further that PW2 on 18<sup>th</sup> March 2023 identified PW1 who was already in police custody for a similar case of stealing as the suspect. PW3 tendered in evidence the following exhibits which were not objected to by the Accused.

Exhibit A1 - Investigation caution statement of the Accused. Exhibit B – charged caution statement of the Accused.

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 the Accused and the Accused was duly called upon to answer the case.

## **CASE OF THE ACCUSED**

The Accused in his defence testified that he does not associate with PW1 who mentioned his name as his accomplice. He further testified that he did not have any agreement with PW1 to go and steal and that he was surprised that PW1 named him as his accomplice. The Accused stated that if he was indeed the accomplice of PW1, he would have also been arrested the day the police arrested PW1. According to Accused, when PW1 was arrested, he was in Gambaga but it took the police several days after the arrest of PW1 to arrest him. He testified further that, it was when he was

invited to the police station by the police, that he was told what the police had against him. Accused stated that he told the police he did not know PW1 and that he does not roam with him.

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

The prosecution is required to prove beyond a reasonable doubt the following elements of the offence of stealing contrary to section 124(1) of Act 29 to secure a conviction of the Accused.

- (i) that the Accused person is not the owner of the items stolen.
- (ii) that he appropriated the items and
- (iii) that the appropriation of the items by the Accused was dishonest.

Considering the evidence adduced by the prosecution and its witnesses, it is a fact that electrical wires installed in the ceiling of the house of PW2 were appropriated dishonestly. It is also a fact that the appropriation was done by PW1, who is not the owner of the electrical wires. PW1 was duly convicted by this court for this offence after he pleaded guilty to the same. What is to be determined is whether PW1 appropriated the electrical wires with the Accused as his accomplice.

In the English case of **Davies v. Director of Public Prosecutions [1954] 1 All E.R. 507, H.L.**, Lord Simonds L.C. said at p. 513 that the term “accomplice” includes:

*“(i) On any view, persons who are participes criminis in respect of the actual crime charged, whether as principals or accessories before or after the fact (in felonies) or persons committing, procuring or aiding and abetting (in the case of misdemeanours). This is surely the natural and primary meaning of the term ‘accomplice’. But in two cases, persons falling strictly outside the ambit of this category have, in particular decisions, been held to be accomplices for the purpose of the rule: viz.,*

*(ii) receivers have been held to be accomplices of the thieves from whom they receive goods on a trial of the latter for larceny ... and*

*(iii) when [an accused] has been charged with a specific offence on a particular occasion, and evidence is admissible, and has been admitted of his having committed crimes of this identical type on other occasions, as proving system and intent and negating accident: in such cases the court has held that, in relation to such other similar offences, if evidence of them were given by parties to them, the evidence of such other*



*parties should not be left to the jury without a warning that it is dangerous to accept it without corroboration."*

PW1 during trial testified that the Accused was his accomplice in the stealing of PW2's electrical wires. He stated in detail that he and the Accused on 6<sup>th</sup> March 2023 first went to check out PW2's house and when they realised that there was no one there, he climbed the ceiling of the house, cut the electrical wires while the Accused stood below the ceiling and received them. PW1 also stated that they hid the electrical wires they cut and came back around 9-10 p.m on the same day to carry them away. The evidence of PW1 clearly implicates the Accused person and makes him an accomplice to PW1 in the theft of PW2's electrical cable.

Evidence of an accomplice is admissible but the court ought to warn itself before convicting an accused person based on uncorroborated accomplice evidence. It is trite law that it is preferable to admit corroborated accomplice evidence as opposed to an uncorroborated accomplice evidence. In the case of **Commodore Alias Kayaa v. The Republic (1976) JELR 69863 (HC)**

*it was held that "where there is admissible corroborative evidence, the trial judge must advert to it, if he intends to use it as corroboration of an accomplice's evidence. If, however, there is no evidence corroborating the accomplice evidence, then if the conviction is to be based solely on the accomplice evidence, it must be made to appear clearly after the warning, that although there is in fact no corroboration, nevertheless the accomplice evidence is considered adequate and acceptable by the trier of fact and thus the conviction will be based solely on it."*

After considering all the evidence on record, I find the evidence of PW1 who is deemed to be an accomplice to be critical, relevant, and material to consider despite there being no corroborative evidence to the testimony of PW1 on record.

The burden of proof after the prosecution had made a prima facie case against the Accused shifted on to the accused to raise a doubt as to his guilt. Although the Accused in his defence vehemently denied that he was the accomplice of PW1 he could not deny the credibility of the evidence of PW1 either through his defence or through cross-examination of PW1. The Accused in his defence stated that he is innocent because if he was guilty, the police would have arrested him immediately after they arrested PW1, but it took the police several days to arrest him. Merely because it took the

police some days to arrest the Accused does not in any way prove his innocence. It does not raise any legitimate doubt in the mind of the court as to his guilt. The Accused also testified that he does not associate or move about with PW1 so he could not have gone to steal the wires with him. It is obvious from the evidence on record that PW1 and Accused know each other. The Accused did not lead any evidence to prove that he was not with PW1 when he went to PW2's house to cut his electrical cables. He did not present an alibi of where he was on the day the theft occurred. The Accused also failed to prove to the court that PW1 had any agenda against him hence the reason he named him as his accomplice.

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'"*.

I, therefore, conclude that the prosecution has successfully established beyond a reasonable doubt all the elements of the offence charged herein. The Accused has failed to put up a defence which raises doubt as to his guilt in respect of the charge herein.

## **FINDING**

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

## **DISPOSITION/SENTENCE**

The court in passing the sentence took into consideration the Accused's plea for mitigation and prosecutions plea of aggravation.

The Accused is hereby sentenced to pay a fine of 300 penalty units or in default serve a prison sentence of fifteen (15) months in hard labour.

**SGD**

**H/W SIMON KOFI BEDIAKO**

**MAGISTRATE**

**07/09/2023**