

**IN THE DISTRICT COURT SITTING AT NALERIGU ON TUESDAY 31ST DAY OF AUGUST
2023 BEFORE H/W SIMON KOFI BEDIAKO ESQ – MAGISTRATE**

SUIT NO. NR/NG/DC/94/22

THE REPUBLIC

VRS

AKUZAB AWINPANG

JUDGEMENT

INTRODUCTION

The Accused person herein, was charged and tried before this court on two counts of Unlawful Entry and Stealing contrary to **sections 152 and 124(1) of the Criminal Offences Act, 1960 (Act 29)**.

The particulars of the offence the accused was charged with in count one reads:

“Akuzab Awinpang: Farmer, Age 25 years: For that you on the 28th day of May 2023 at about 1220 hours at Nalerigu in the North East magisterial district and within the jurisdiction of this court you did unlawfully enter one Atariba Raymond a development officer’s house without his permission.”

The particulars of the offence the accused was charged with in count two reads:

“Akuzab Awinpang: Farmer, Age 25 years: For that you on 28th day of May 2023 at about 1220 hours at Nalerigu in the North East Magisterial district and within the jurisdiction of this court you did enter one Atariba Raymond’s bedroom and stole a laptop, a bucket of washing powder, a bar of key soap, a pack of baby diapers and panties.”

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 both counts one and two.

DEFINITION AND ELEMENTS OF OFFENCE

COUNT ONE

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

COUNT TWO

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 in this case is a 37-year-old development officer who resides in Nalerigu whilst the Accused is a 25-year-old farmer who also resides in Nalerigu. On 28th May 2023, the complainant's wife Genvieve left for the church and when she returned from the church she was in her bedroom and overhead noise in the compound. She came out to see who was making the noise and saw the Accused person in the compound, but he jumped over the wall and went out. She raised an alarm, and the neighbours came out, but the accused was able to escape. She later realised that her husband's laptop was taken, a bucket of washing powder, a pack of baby diapers and a bar of key soap were all taken. After committing the crime, the Accused has since left town and moved to Gambaga. Three weeks later the Accused was offering for sale a laptop to Azanlerigu a.k.a Abuja who is a witness in the case and a friend to the complainant. He told the Accused person that his money was not up, so he was going to bring the rest of the money, but he went and informed the complainant and when they returned to the accused person, he told them that he had sold the laptop to an unknown person which the police is yet to recover. On 23rd June 2023 complainant reported the case to the police and the accused was arrested in Gambaga, charged, and brought before this honourable court as stated in the charge sheet.

The prosecution's case, in summary, is that the Accused person unlawfully entered the house of the complainant and stole his laptop and other items from the house as stated in the particulars of the offence of counts one and two supra. The law places the burden of proving this allegation made by the prosecution on the prosecution to prove the same beyond a reasonable doubt. To discharge the burden of proof imposed on the prosecution, the prosecution called five (5) witnesses to testify in support of its case.

Abachale Genevieve (**hereafter “PW1”**) testified that the complainant is her husband. She told the court she is a midwife and resides in Nalerigu. PW1 testified that on 28th May 2023 upon hearing a noise in the compound of her house, she came out to check what was making the noise. According to PW1, when she came out, she saw the Accused in the compound of the house. She stated that when the Accused saw her, he started to run. She stated further that she shouted at the Accused to stop but he jumped over the wall of the house and escaped. PW1 avers that she continued to shout for help until her father-in-law and some neighbours came out. According to PW1, she described the Accused and the clothes he was wearing to his father-in-law and her father-in-law stated that he knows the Accused person. PW1 testified further that she went to check her husband’s room which she found open and realised that his laptop was not there. She also checked her sister’s room and realised that her new panties, a bar of key soap, a bucket of washing powder, and a pack of diapers had also been taken from her room. PW1 stated that her father-in-law went to where the Accused lived but he was not found there.

The second witness of the prosecution is Wuni Adam (**hereafter ‘PW2’**). PW2 is a painter who lives in Nalerigu. He testified that about a month ago, he met the Accused at Nyaaba’s drinking spot in Nalerigu and the Accused told him that he had a laptop to sell so he should find a buyer for him. PW2 testified that he informed his friend Majeed and they both informed their friends Salifu and Azanlerigu a.k.a Abuja to tell them that if they want a laptop, they know someone who is selling one. According to PW2, Salifu asked them to bring the laptop to him, but the Accused person refused to give it to them. He told them to tell Salifu to come to him. Azanlerigu subsequently went to the Accused to buy the laptop, but the Accused informed him that he had sold the laptop.

The prosecution called Yambilla Azanlerigu (**“hereafter PW3”**) as its third witness in the case. According to PW3 about a month ago, he received a call from his friend called Majeed that he knows someone who is selling a laptop if he wants to buy the same. He stated that he told him he did not have money to buy it at that time. PW3 testified that four days later, he met PW2 and asked him whether the laptop was still available. According to PW3, PW2 was with Majeed, when Majeed

called him to inform him about the laptop. He stated that PW2 told him the Accused was the person selling the laptop so PW3 should go and see him. PW3 testified further that about three days later, he met the Accused and asked him if the laptop he was selling was still available. According to PW3, the Accused told him that someone in Gambaga gave him the laptop, but that person has come to collect the laptop because he did not get a buyer. PW3 stated that he informed the complainant that the Accused who was seen in their house and who ran away, is selling a laptop. The complainant then reported the matter to the police and the Accused was subsequently arrested.

The prosecution's fourth witness is the police investigator by name No. 49649 G/Const. Ayulugu Mathew ("**hereafter PW4**"). He testified that the matter was referred to him for investigation on 23rd June 2023. According to PW4, his investigation led to the arrest of the Accused. PW4 tendered in evidence the following exhibits which were not objected to by the Accused.

Exhibit A - Investigation caution statement of the Accused.

Exhibit A1 – Supplementary investigation caution statement of the Accused. Exhibit B – charged caution statement of the Accused.

The prosecution called the complainant, Atariba Raymond ("**hereafter PW5**") as its final witness. PW5 testified that PW1 who is his wife informed him that on 28th May 2023, she heard noise in the compound while she was in the room and so she came out to check it. PW5 stated that according to PW1 she saw the accused in the compound, but the Accused jumped over the wall and escaped. He testified further that PW1 informed him that she later realised that PW5's laptop, a bucket of washing powder, a bar of key soap, panties and baby diapers had been taken from the house. According to PW5, he subsequently got information from PW3 that the Accused was selling a laptop. PW5 testified further that he went to Gambaga with PW3 to meet the Accused, when they met him and asked about the laptop, the Accused informed them he had already sold the laptop. They brought the accused to Nalerigu and PW1 confirmed that the Accused was the person she saw in their house on 28th May 2023, and he ran away.

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 stated that he is a farmer resident in Nalerigu. In his evidence-in-chief, the Accused denied stealing a laptop or anything from PW5. According to the Accused, he was at sister Sadia's place when one Sulley and his friend came to him and offered him a phone to buy. He bought the phone. The Accused testified that after he bought the phone, Sulley informed him that a friend of his has a laptop for sale so the Accused should buy it if he has money to buy it. He stated that he told him he could not buy it. Sulley then asked him to find a buyer for the laptop. According to the Accused, he told PW2 about the laptop but PW2 declined to buy it because he did not have the money to buy it. The Accused testified further that he told Sulley that PW2 could not buy the laptop and so Sulley took the laptop away. The Accused told the court that later that day, in the evening, PW3 also came to him to ask about the availability of the laptop. He informed him that the laptop was not for him and that those who were selling it had taken it away.

ANALYSIS OF FACT & LAW:

COUNT ONE

To secure a conviction of the Accused in respect of count one, the prosecution must establish beyond a reasonable doubt that the Accused unlawfully entered the house of PW5 with the intention to steal in accordance with **section 152 of Act 29. Section 153 of the Criminal Offences Act, 1960 (Act 29)** explains what amounts to unlawful entry as follows: *"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."*

In the case of **Kanjarga v The State [1965] GLR 479-483** it was held that *"to establish the crime of unlawful entry, the prosecution must, in addition to proving entry, prove that an intent to commit a crime in the premises existed at the time of entry and was the purpose for the making of the entry."*

To discharge this burden, the prosecution provided evidence by way of the testimony of PW1. PW1 testified that on 28th May 2023 at 12:30 pm she saw the Accused in the compound of PW5's house. The Accused ran and jumped over the wall of the house to escape. She also testified that she later found out that PW5's laptop had been taken from his room. She also found that panties, a bar of key soap, a bucket of washing powder, and a pack of diapers had also been taken from her sister's room. When the Accused cross-examined PW1 she stated that she did not see the Accused holding anything when she saw him. She however added that when they went outside the wall of the house, they found the panties and some exercise books but not the laptop and bucket of washing powder. There is no doubt in the mind of the court that PW1 saw the accused in the compound of PW5's house. This is because the Accused failed to provide a shred of evidence to prove to the court that he was not in the compound of PW5's house as stated by PW1 and therefore he was not the person PW1 saw in the house on that day. He also failed to prove to the court where he was on the day of the incident. The Accused entered the house of PW5 unlawfully because he did not enter the house with the consent of any resident of the house. He did not establish to the court that he had any lawful right to enter the house of PW5. Considering that after the Accused was seen in the house of PW5 and he jumped over the wall and escaped and because it was subsequently realised by PW1 that some items were stolen from the house, the court can safely conclude that the Accused had entered the house of PW5 with the intent to commit a crime to wit stealing.

The prosecution has successfully proved beyond a reasonable doubt that the Accused unlawfully entered the house of PW5 with the intention to steal.

COUNT TWO

In respect of count two, 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 the Accused appropriated the items and

(iii) that the appropriation of the items by the Accused was dishonest.

From the evidence on record, it is a fact that the stolen items which include, a laptop, a bucket of washing powder, a pack of diapers, panties and a bar of key soap were not owned by the Accused. It is also a fact that the items listed above were appropriated by a person. The burden was on the prosecution to further establish that the person who appropriated the items was the Accused person. PW1 testified that on the day the items were stolen from PW5's house she saw the Accused in the compound of the house of PW5. PW1 admitted that she did not see the Accused holding the items, but the Accused after she saw him in the house jumped over the wall of the house and escaped. She testified that after the Accused escaped, she checked PW5's room and her sister's room and realised that the items had been stolen. PW1 admitted that she did not know the Accused prior to the day she saw him in the compound of PW5's house. According to PW1, after the Accused had escaped, she described the Accused and the clothing he was wearing to her father-in-law. Her father-in-law suspected it was the Accused. Her father-in-law went to where the Accused stayed but he was not there. Apart from PW1 seeing the Accused in the compound, there is no direct evidence on record to implicate the Accused. The prosecution therefore resorted to adducing circumstantial evidence to prove the guilt of the accused beyond a reasonable doubt.

To prove an allegation, direct evidence is generally preferred over circumstantial evidence. Direct evidence refers to evidence that directly proves a fact without the need for any inference or presumption. It is evidence that is based on personal knowledge or observation and does not require any further interpretation. Circumstantial evidence refers to evidence that is not directly observed but can be inferred from the circumstances surrounding a case. In the case of **Gligah & Atiso v The Republic [2010] SCGLR 870** the Supreme Court defined circumstantial

evidence as: *"Pieces of evidence which if put together made a very strong case against the accused person. It was like a series of small threads and which when put together, made a very strong rope. The same with circumstantial evidence. It was generally accepted that when direct evidence was unavailable, but there were bits and pieces of circumstantial evidence available, (as in the instant case), and when those were put together, they would make stronger, corroborative and more convincing than direct evidence."*

Where direct evidence is not available to prove a fact or an allegation, circumstantial evidence may be admitted to prove the fact or allegation. The use of circumstantial evidence in criminal trials in Ghana is well-established. The courts have emphasized that before drawing an inference of guilt from circumstantial evidence, it is crucial to ensure that there are no other co-existing circumstances that would weaken or destroy the inference.

To rely on circumstantial evidence to prove the guilt of an accused person, firstly, it must lead to an irresistible conclusion that the crime has been committed. See Ametewee v The State [1964] GLR 551 and the Essentials of the Ghana Law of Evidence by S.A Brobbey, page 258. Secondly, it must lead to an irresistible conclusion that the crime was committed by no other person than the accused. See Duah v The Republic [1987-88] 1 GLR 343 and of the Essentials of the Ghana Law of Evidence by S.A Brobbey, page 259.

Thirdly, it must be inconsistent with the innocence of the accused. See State v Anani Fiadzo [1961] GLR 416 and of the Essentials of the Ghana Law of Evidence by S.A Brobbey, page 260.

The evidence adduced by the prosecution indicates that the items listed above were stolen from the house of PW5 thereby indicating without equivocation that a crime was committed. The Accused was seen in the house at the time the items were stolen, and he escaped by jumping over the wall of the house. The Accused failed in his defence to raise doubt in the mind of the court that the person PW1 saw in the house on that day was not him. The incident happened at 12:30 p.m. which is daytime. This leads the court to rule out any issue of mistaken identity. PW1 during her testimony was very adamant, that the Accused was the person she saw in the house on the day the items were stolen. PW2 testified that after the items were stolen from PW5's house, the Accused met him at a drinking spot and the Accused told him he had a laptop which he was selling so PW2 should find him a buyer. PW2 informed PW3 who subsequently met the Accused and asked him if the laptop he was selling was available, but the Accused informed him that the laptop was given to him by somebody in Gambaga and that person had taken the laptop away. The testimony of PW2 was corroborated by that of PW3. The Accused admitted that he offered a laptop for sale to PW2 but PW2 could not buy it because he did not have money. He testified that he was only finding

someone to buy the laptop that was presented to him by one Sulley. According to him when he offered it to PW2 and he could not buy it, Sulley took the laptop away. If you consider the fact that a laptop was stolen from PW5's house and the Accused was seen in PW5's the day the laptop was stolen and the fact that the same Accused person offered a laptop for sale to PW2, it leads to one conclusion that the Accused indeed stole the laptop and the other items from PW5's house. The Accused in his defence failed to produce the said Sulley who he claims brought the laptop to him for him to get a buyer for it.

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

COUNT ONE

I find the Accused guilty of the offence of **Unlawful Entry: contrary to section 152 of the Criminal Offences Act, 1960 (Act 29)** and I hereby convict him of the same.

COUNT TWO

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 as well as the period he has spent in custody during the trial.

The Accused is hereby sentenced as follows:

COUNT ONE

The Accused is hereby sentenced to serve a prison sentence of **six hundred and twenty (620) days** in hard labour.

COUNT TWO

The Accused is hereby sentenced to serve a prison sentence of **six hundred and twenty (620) days** in hard labour.

The Accused shall serve the sentences in counts one and two concurrently.

SGD

H/W SIMON KOFI BEDIAKO

MAGISTRATE

31/08/2023