

**IN THE DISTRICT COURT 2, TAMAHE HELD ON MONDAY 8<sup>TH</sup> APRIL, 2024  
BEFORE HIS WORSHIP D. ANNAN ESQ.**

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**SUIT NO. B7/25/23**

**THE REPUBLIC**

**V**

**1. EMMANUEL BUDALI  
2. BARIHAMA TAMIN**

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**JUDGMENT**

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1. In this case, the original charge sheet filed on 2<sup>nd</sup> June, 2023 was substituted on 30<sup>th</sup> June, 2023. Per the said substitution, the prosecution arraigned before this court the accused persons, Emmanuel Budali (A1) and Barihama Tamin (A2), on the charges of conspiracy to commit crime to wit, stealing and stealing, contrary to sections 23(1) and 124(1) of the Criminal Offences Act, 1960 (Act 29).

**FACTS OF THE CASE**

2. The facts of the case as given by the prosecution are that A1 is a security personnel with Mark 4 Security Company and attached to Nut for Growth Company in Tamale. A2 is a welder at Nut for Growth Company. According to prosecution, Nut for Growth Company have been recording theft incidents particularly with its electrodes holder, cables, gas regulators, earth rods and electrode wires for some time. On 30<sup>th</sup> March, 2023 the company detected that 12 packets of welding electrodes of different sizes were missing. A complaint was lodged with the police where investigation revealed that A1 approached A2 to give him some of the welding electrodes for his use. A2 then took the welding electrodes and hid same in the company yard and

directed A1 to where he hid them. A1 informed the police that he took 2 packets of the welding electrodes which was valued GHS23,352.00 and sold them for GHS80.00 to one Abubakri Osman. The 2 packets of electrodes were retrieved and same retained as exhibits. After close of investigations, the accused persons were arraigned before this court.

3. It is important to mention here that the prosecution discontinued its case against Abukari Osman in the earlier charge sheet and was accordingly discharged. A1 pleaded guilty on the above charges and was sentenced to 1 year jail term.
4. A2 pleaded not guilty. In effect, this judgment regards A2's plea to which the prosecution is required to prove its charges.

#### DEFINITION OF THE OFFENCE

5. Section 23(1) of Act 29 provides that, "Where two or more persons agree or act together with a common purpose for or in committing or abetting a crime, whether with or without any previous concert or deliberation, each of them commits a conspiracy or abet that criminal offence." And in the case where the crime is committed, the accused is punished for that crime. If not committed, accused is punished as if he had abetted that criminal offence, see section 24(1) of Act 29.
6. 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 a person who steals commits a second degree felony, see s. 124(1).

## BURDEN OF PROOF

7. 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. It is settled law that a person is presumed innocent until the contrary proved, see article 19(2)(c) of the 1992 Constitution. 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). In **Gligah & Atiso v The Republic [2010] SCGLR 870**, the Supreme Court, per Dotse JSC re-emphasized this point thus:

“...whenever an accused person is arraigned before any court in any criminal trial, it is the duty of the prosecution to prove the essential ingredients of the offence charged against the accused beyond reasonable doubt. The burden is, therefore, on the prosecution and it is only after a prima facie case has been established by the prosecution that the accused person is called upon to give his side of the story.”

8. Thus, 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. But the 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 **Owusu-Ansah v The State [1964] GLR 558**.

## METHODOLOGY

9. In the instant case, A2 pleaded not guilty to the charges herein. Upon such a plea, the prosecution must prove the whole of its case including the identity and knowledge of offences, see **Owusu-Ansah v The State (supra)**.

10. The prosecution in proving its case against the accused called 2 witnesses: Prince Ahenkan Forjour (Complainant/PW1) and D/L/Cpl. Addo Seyram Dave (PW2). I must mention here too that prosecution sought to call a witness, Abukari Osman. But the said witness had sat through the evidence of PW1. As such he was prejudiced to testify. Hence, his witness statement was struck out.

11. The prosecution tendered in evidence the following exhibits:

- a. Exhibit A - Investigation Cautioned Statement of A2.
- b. Exhibit B - Charge Cautioned Statement of A2.
- c. Exhibit C – Investigation Cautioned Statement of A1.
- d. Exhibit D - Charge Cautioned Statement of A1.
- e. Exhibit E –Investigation Cautioned Statement of Abukari Osman.
- f. Exhibit F - Charge Cautioned Statement of Abukari Osman.
- g. Exhibit G – The 2 packets of welding electrodes.

#### The Prosecution's Case

12. PW1 recounted similar facts as narrated above. He added that internal investigations revealed that A1 had knowledge of the missing items. PW2 added that A2 received the 2 packets from A1 and sold same to Abukari Osman.

13. At the end of the Prosecution's case, the Court found that a prima facie case had been established against A2 and therefore called upon him to open his defence.

#### Accused Person's Defence

14. A2 in his defence stated briefly that, "On that faithful day I was doing my duty as a welder. A1 came and informed me that he needed the electrodes. I told him that I

couldn't give it to him. He came to me on several occasions, but I told him I could not give it to him. That is all that I told A1 and I don't know what is going on. That is all."

15. A2 sought to call a witness, but later abandoned same.

#### ANALYSIS OF FACTS AND LAW

16. Following the decision in **Owusu-Ansah v The State (supra)**, the prosecution was therefore required to prove the offence of conspiracy to commit crime to wit stealing and stealing beyond reasonable doubt.

17. Regarding conspiracy to commit crime, the court in **Doe v The Republic [1999-2000] 2 GLR 32** held that, "The offence of conspiracy could not be maintained against one person only since by virtue of s. 23(1) of Act 29, the offence was committed where two or more persons agreed or acted together with a common purpose for or in committing or abetting a crime, whether with or without previous consent or deliberations. ..." See also **Faisal Mohammed v The Republic [2020] Crim. LR 286**, **Logan v The Republic [2007-08] SCGLR 76**. Where the crime for which the two or more accused persons conspired is committed, the accused persons are punished for that crime, see s. 24 of Act 29.

18. In the case, **Brobby & Ors v The Republic [1982-83] GLR 608**, the essential elements to be proved by prosecution with regards to the offence 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. Therefore, a person could not be guilty of stealing unless he was proved to have appropriated the thing in the first place. See the cases of **Anang**

**v The Republic [1984-86] 1 GLR 458 and Ampah & Anor. v The Republic [1976] 1 GLR 403.**

19. In the instant case, A1 has been convicted on his own plea and punished. Prosecution maintained that A2 agreed or acted together with A1 in stealing the 2 packets of electrodes. It explained that there was no way a security man could get to the welding department. According to PW2, where the welding department is located (i.e. where A2 works) is far away from the security gate (i.e. where A1 works). Hence, it took the two accused persons, acting together, to steal the said 2 packets of electrodes. Below is what ensued when PW2 was cross-examined by A2:

“Q: You were told that I stole the electrodes, what evidence made you believe I stole it?

A: At the yard, everybody has his own department. The welders have a container where the electrodes are kept. Each day, they go for a certain number that will help them do their work and if you are not a welder, you do not go to that area. So the said electrodes were picked and kept under a wood. So after they closed from work, A2 informed A1 that they should go and pick it. A1 took us to where the electrodes were kept, that made me to believe that you stole it.”

20. Also from the evidence, A2 in his evidence-in-chief indicated that he did not know A1, save when this incident happened. Yet, in his own defence, he indicated that A2 had come to him several times. Below is what transpired:

“Q: Do you know A1?

A: I don’t know A1. I got to know him on the date the incident happened.

...

Q: In your caution statement, you indicated that, "...The security man Emmanuel Budali came to me and asked for some welding rods ..."?

A: That is so.

...

Q: This clearly shows that you know A1 but you are not being truthful to the court?

A: I do not know A1."

21. On the totality of the evidence, it is not in doubt that 2 packets of electrodes were taken from Nut for Growth Company Limited. Also, there is clarity on the accused persons acting together in committing the stealing. In fact, A2 in his defence stated that A1 came to him on "several occasions", but in court he sought to say he did not know A1.

22. Based on the above authorities, **Doe v The Republic [supra]** and **Brobbeey & Ors v The Republic [supra]**, I hereby come to the conclusion that prosecution has been able to prove beyond reasonable doubt that A2 conspired with A1 in stealing the 2 packets of electrodes, belonging to Nut for Growth Company Limited. Accordingly, I hereby find A2 guilty on the charges of conspiracy to commit crime to wit: stealing and stealing, contrary to sections 23(1) and 124(1) of Act 29.

## SENTENCING

23. Having heard A2, Salisu B. Issifu Esq. as a friend of the court and the prosecution on mitigation, I do remind myself that A1 was sentenced to 1year IHL on each count.

Sentences to run concurrently. He did not waste the court's time and presently serving his sentence. A2 is now found guilty on each count, after wasting the court's time for almost a year.

24. In the circumstances, A2 is to serve a jail term of 14 months IHL. Section 302 of Act 30 applied, regarding the primary offence of stealing.

25. Lastly, the Registrar of this Court to return the 2 electrodes to Nut for Growth Company Limited.

**H/W D. ANNAN ESQ.**

**[MAGISTRATE]**

INSP. SULEMANA MOHAMMED FOR THE REPUBLIC

A2 APPEARED IN PERSON

Reference:

1. *Article 19(2) of the 1992 Constitution*
2. *ss. 124(1) and 125 of the Criminal Offences Act 1960 (Act 29)*
3. *s. 131 of the Criminal Procedure Act (Act 30)*
4. *ss. 11(2), 13(1), 15, 22 and 120 of Evidence Act, 1975 (NRCD 323)*
5. *Miller v Minister Of Pensions [1947] 2 ALL ER 372 at 374*
6. *COP v Isaac Antwi [1961] GLR 408*
7. *Gligah & Atiso v The Republic [2010] SCGLR 870*
8. *Owusu-Ansah v The State [1964] GLR 558*
9. *Doe v The Republic [1999-2000] 2 GLR 32*



10. *Mohammed v The Republic* [2020] Crim. LR 286
11. *Logan v The Republic* [2007-08] SCGLR 76. *Brobby & Ors v The Republic* [1982-83] GLR 608
12. *Anang v The Republic* [1984-86] 1 GLR 458
13. *Ampah & Anor. v The Republic* [1976] 1 GLR 403