IN THE HIGH COURT OF JUSTICE, HELD IN SOGAKOPE ON MONDAY THE 3RD DAY OF MARCH, 2023 BEFORE HER LADYSHIP JUSTICE DOREEN G. BOAKYE AGYEI (MRS.) HIGH COURT JUDGE

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SUIT NO: E12/01/2023

THE REPUBLIC

VS

ISAAC BOADI

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PARTIES: APPELLANT IN LAWFUL CUSTODY – REPRESENTED BY MR. NOAH GAKPETOR (FATHER AND RUEBEN KORSHI AKORLI (RELATIVE).

COUNSEL:
MR. ETSE SENYO AXAME ASSISTANT STATE ATTORNEY (A.S.A.) FOR THE REPUBLIC PRESENT.

MR. ISAAC AIDOO FOR APPLICANT ABSENT.

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JUDGMENT

The Appellant herein was convicted of the offence Stealing contrary to Section 124 of the Criminal Offences Act, 1960 (Act 29) and sentenced to eight (8) years IHL by the Circuit Court, Sogakope, in the Volta Region, presided over by His Honour Isaac Addo, Esq., This instant Appeal prays that the Appellant be acquitted and discharged. The then Accused person now convict was charged with stealing. The brief facts are that the Accused person sometime in 2019 is alleged to have stolen money from the company Nanatel Akatsi branch he worked for as the Branch Manager. The brief facts are stated on page 2 of the Record of Appeal. Based on the facts and the charge, the Appellant

pleaded not guilty to the offence and the case went through a plenary trial.

FACTS AS PRESENTED

Complainant Prince Henry Amenor is the Internal Auditor of Nanatel Ltd., sole distributors of M.T.N. products. Accused Isaac Boadi was the Manager of the named company at Akatsi Branch who assumed post barely six (6) months ago. On 5/12/2018, Accused's books and records were audited and it was detected that he embezzled cash the sum of GH¢234,555.95 being sales he made to customers and payment made to him. He was subsequently handed over to the Police. Accused admitted having embezzled only GH¢54,385.00 out of the amount stated above. He was given the chance to reconcile the figures with the Auditor and concluded that he has embezzled GH¢234,555.95. Investigation revealed that Accused opened his personal merchant number 0557966220 with the name 'His Glory Enterprise' and gave out to customers whereby payment of sales were channeled into his personal account. It was also detected that certain payments were made direct to his personal M.T.N mobile money account number 0244422098 which he cashed out. After the reconciliation, Accused admitted having embezzled the amount stated on the charge sheet and stated that he used the money to play soccer bets and bought on-line vehicles at Tonaton.com. After investigations he was charged and put before you.

GROUNDS OF APPEAL

1. Grounds

(a) His Lordship should have given weight to mitigation of sentence and the fact that the appellant was a young offender and that was his first brush with the law and given him lesser sentence and that occasioned a miscarriage of justice.

(b) Judgment is not supported by the evidence on record

(c) External Auditors report not mentioning any loss of money as against that of the Internal Auditor spanning the same year as reasonable doubt should have inured to the benefit of the Appellant, failure occasioned a grave miscarriage of justice.

(d) The sentence of 8 years is excessive.

2. The sentence is excessive.

The position of the law is that an appeal is by way of rehearing. This position has been crystalized in the Supreme Court cases **of TUAKWA VRS. BOSOM [2001-2002] SCGLR 61, BROWN VRS. QUASHIGAH [2003-2004] SCGLR 930; OXYAIR LTD & DARKO VRS WOOD & OTHERS [2005-2006] SCGLR 1057.**

Criminal appeals are also by way of re-hearing. In the case of **DEXTER JOHNSON V REPUBLIC [2011] 2 SCGLR 601 AT 699,** the Supreme Court stated that what was meant by an appeal being by way of re-hearing was that "the appellate court had the powers to either maintain the conviction and sentence, or set it aside and acquit and discharge or increase the sentence".

The duty of the prosecution in criminal cases is to prove the guilt of the accused or the appellant herein beyond reasonable doubt. This is stated in Section 13(1) of the Evidence Act, 1975 (N.R.C.D 323) that; "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."

Additionally, Section 11(2) of N.R.C.D 323 also provides the threshold required on the burden of producing evidence by the prosecution as follows: "(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.

It is therefore incumbent on this Court to critically peruse the entire record of appeal, evaluate the evidence before arriving at a decision as to whether the decision of the trial court is justified or otherwise. If I find the latter to be the position then this Court would be justified to interfere with the Judgment. See also **KYIAFI VRS WONO (1967) GLR 463 CA.**

BURDEN OF PROOF

The requirement of the law per Article 19 (2) (c) of the 1992 Constitution is that a person charged with a criminal offence is presumed innocent until he is proved guilty or he pleads guilty. The article reads: (2) "A person charged with a criminal offence shall- (c) be presumed to be innocent until he is proved or has pleaded guilty"

The burden of proof in a criminal action therefore totally rests on the prosecution. 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 a person was guilty, has been provided for in sections 13 and 15 of the 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 him 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.

In **REPUBLIC V. ADU-BOAHENE & ANOTHER [1993-94] 2 GLR 324-342,** per Kpegah

JSC, the Supreme Court held that: "A plea of not guilty is a general denial of the charge by an accused which makes it imperative that the prosecution proves its case against an accused person…….When a plea of not guilty is voluntarily entered by an accused or is entered for him by the trial court, the prosecution assumes the burden to prove, by admissible and credible evidence, every ingredient of the offence beyond reasonable doubt".

The onus of proof is higher in criminal cases than civil cases. By the Evidence Act, Act 323 the onus is prove beyond reasonable doubt and any doubt created must inure to the benefit of the accused person. This is supported by the case of **COMMISSIONER OF POLICE (C.O.P) VRS ISAAC ANTWI [1961] GLR 408 at 412 where Korsah CJ** quoted with approval the statement of Lord Sankey that *"The law* is *well settled that there* is *no burden on the accused.* If *there* is *any burden at all on the accused, it* is *not to prove anything, but* to *raise a reasonable doubt. If the accused can raise only such a reasonable doubt he must be acquitted: vide* ***CHAN KAU ALIAS CHAN KAI* V. *THE QUEEN*; *JOHN BROWN AKOSA V. THE COMMISSIONER OF POLICE; R.* V. *OJOJO; GEORGE KWAKU DANSO AND THEODORE PHILLIP WHENTON* V. *THE KING*; R. V. *HEPWORTH AND FEARNLEY'*.**

On the part of the defence, that is the Accused person, all that he needs to do by way of producing evidence is to raise a doubt as to his guilt. **WOOLMINGTON V DIRECTOR OF PUBLIC PROSECUTION [1935] AC 462** is the locus classicus on this principle where the Appeal Court of England per Sankey LC expressed the view that:
"……..while the prosecution must prove the guilt of the prisoner, there is no such burden laid on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the jury of his innocence."

THE LAW AND EVALUATION OF THE EVIDENCE Section 125 of Act 29 defines stealing as follows: "A person steals who dishonestly appropriates a thing of which that person is not the owner".

In the case **of THE STATE VS. W. M. Q. HALM AND ARYEH KUMI CRIM. APP NOS. 118/67 AND 113/67, 7 AUGUST, 1969; (1969) CC 155,** the court per Akufo Addo, C. J., Ollennu, Apaloo, Amissah JJ.A and Archer J stated the three essential ingredients which prove a charge of stealing under our criminal law as: "(i) That the person charged must not be the owner of the thing allegedly stolen" (ii) That he must have appropriated the thing; (iii) That the appropriation must have been dishonest." See also **LUCIEN V. THE REPUBLIC [1977] 1 GLR 351-359** at holding 2.

Section 122 (2) of the Criminal and Other Offences Act, 1960 (Act 29) defines Appropriation as follows: "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 some person may be deprived of the benefit of his ownership, or of the benefit of his right or interest in the thing, or in its value or proceeds, or any part thereof".

Akamba JSC in the case of **EKOW RUSSEL V. THE REPUBLIC [2016] 102 GMJ 124 SC,** stated as follows: "…….. A confession is an acknowledgement in express words, by the accused in a criminal charge, of the truth of the main fact charged or of some essential part of it. **By its nature, such statement if voluntarily given by an accused person himself, offers the most reliable piece of evidence upon which to convict the accused.** It is for this reason that safeguards have been put in place to ensure that what is given as a confession is voluntary and of the accused person's own free will without

fear, intimidation, coercion, promises or favours……..”

All the ingredients constituting a charge must equally be proved against an accused person in a criminal trial and any unproven ingredient must also secure an acquittal for the accused person per the case of **PUBLIC PROSECUTOR VRS YUVAVA (1970) AC 913 at 921 where the Court opined that** '*Generally speaking no onus lies upon a defendant in criminal proceedings* to *prove or disprove any fact; it* is *sufficient for his acquittal if any of the acts which if they existed would constitute the offence with which he* is *charged are not proved'*

From the evidence adduced in this case there are some doubts which ought to have inurned to the benefit of the Appellant. The evidence of the Internal Auditor was to the extent that the Accused person after an audit was left with a shortfall for which the only imputation is that he has stolen the said money.

The evidence of Prosper Kudzordzi is that as a deputy to the Accused he (the Accused) ordered him to fix an amount of GhC56000 into the Regional Sales Manager’s account (R.S.M.**)**

Counsel for Appellant submits that notably the amount Prosper inputted into the RSM's account does not amount to the figure allegedly stolen by the Accused person and this is a doubt raised. That the evidence of the Prosecution is fraught with inconsistencies and doubts.

PW1 mentioned His Glory Ventures as the company that the Accused person registered his merchant sim card in though he admitted during cross examination that a company certificate is paramount before MTN can register a merchant sim card. PW1 did not attach any company certificate confirming that His Glory Ventures is in the name of the

accused person, despite PW1's assertion that because they work with MTN they have access to classified documents and information for want of better expression.

PW1 confirmed that Nanatel has External Auditors and this External Auditors' Report did not mention or point to the Appellant as stealing money from Nanatel. PW1 confirmed that each employee has his or her unique log in password into the tally system used by Nanatel. This is also a doubt according to Appellant per his Counsel.

Counsel also submits that His Glory Ventures mentioned in paragraph 14 of the witness statement of PW1, which he firmly stood by, had His Glory Enterprise on his own Exhibit E that he had attached to his witness statement. That PW1 did not know the salary the Accused person earned irrespective of his audit yet he alleges and testified that the Accused person has stolen money from Nanatel. He contends that PW1 could not also tell whether the Accused did other jobs after close of work from Nanatel. That the witness could not tell whether or not Forster Asah the previous Auditor of Akatsi branch of Nanatel left an audited report before he resigned. He submits that the witness also admitted during cross examination that one Joshua at Akatsi branch of Nantel is the person who received and handled stocks and yet any alleged theft was laid at the doorstep of Appellant.

On PW2, Appellant per his Counsel pointed out that PW2 said he was an Accountant but later denied and said he was a Data Entry Clerk and that could be more so because he did not have much knowledge about the operations of Nanatel and he did not know of Nanatel's External Auditors. Counsel also submits that PW2 signed to the Audit that was conducted before the Appellant proceeded on leave and the said Report did not find anything against the Appellant.

PW3, the Investigator categorically said his investigation centered solely on mobile

money (momo) transactions involved in by the Appellant. The Investigator however admitted during cross examination that the Appellant as the Branch Manager transacted not only in momo but in scratch cards and electronic credit transfers or simply put EVDS.

PW3, admittedly not an Accountant believed in PW1's audited report which belief he admitted during cross examination. He did not consult any Accountant in the Police Service or any other independent Accountant to ascertain the culpability of the Appellant. PW3 did not check stock, and also did not go through the Nanatel tally accounting system or at all. From the exhibits attached to the witness statement of PW3 the Investigator, the Appellant vehemently denied any theft.

The Appellant opened his defence and explained that being the head or the manager was the reason why he took responsibility for any loss at the branch and not that he confessed to stealing or committing a crime. The External Auditor's Report did not mention any monetary shortfall and this was established during cross examination. The Accused person in his defence testified himself and called no witness filing a 13-paragraph Witness Statement. The Accused person told the Court that he worked with the Nanatel Company as a manager of the Kadjebi branch and later Akatsi branch on transfer and that at Kadjebi as the Branch Manager, nothing happened. That he was duly audited by both Internal and External Auditors who found nothing against him. According to the Accused person, upon his arrival at the Akatsi branch, both the Internal Auditor Foster Azah and External Auditors found nothing against him until Amemor took over as the Internal Auditor. It is his case that after Amemor, the Internal Auditor took over from Foster Azah, contrary to the External Auditor's Report and without thoroughly taking stock, he said that the company money was missing.

The Accused person denied the charge of stealing against him and was emphatic that he had not stolen company money. The Accused person further told the court that under pressure at the police station and without a lawyer he said that if there was any debt, he was accepting responsibility and that he would pay hence payment of GH₵4,000.00 at the Police Station and not that he had stolen company money. That as a Branch Manager, he was to be held responsible and he was not given the opportunity to answer that is why at the Police Station and to gain his liberty through bail, he said that if any money was missing, he will pay. According to the Accused person, he was not confessing to any wrong doing and that he denied the charge of any wrong doing in the same Police Report. That the External Auditor's Report for that year 2018 did not find him culpable in relation to any missing money at the Akatsi branch. The Accused person told the Court that he did not establish any company to use the merchant line.

The Republic is opposed to this appeal and submits that the merchant SIM number 0557966220 with the name "His Glory Enterprise" belongs to the Appellant since the PW5 and PW6 both claimed the said merchant line was given to them by the Appellant for them to make payment for the unit transfer they bought from the Appellant. That also in its judgment, the trial court at page 452, 453,454 found as a fact that, the said merchant SIM number 0557966220 with the name "His Glory Enterprise" really belongs to the Appellant when it sought to reason that Exhibit D had numerous transactions between His Glory Enterprise merchant SIM account number 0557966220 and the Appellant Isaac Boadi between the period 24th May 2018 to 6th December 2019. Exhibit D recorded series of transactions in which the three (3) registered customers that testified, thus PW4, PW5 and PW6, made payments to upon their purchase of unit transfers from the Appellant.

The Republic/Respondent submits that Appellant used this modus operandi to receive

money from the three customers of Nanatel Limited onto the "His Glory Enterprise" merchant SIM and only transferred part of the monies received to Nanatel Ltd as and when he decides. The Appellant further transferred money from the said "His Glory Enterprise" merchant SIM to his personal MTN subscriber account for his personal use as well as other subscribers. For instance, in Exhibit H1, found at page 319-320 of the Record of Appeal, the Appellant stated that he used some of the money for his private ventures. "HIS GLORY ENTERPRISE" merchant account is not a receiving agent of monies from registered customers of Nanatel Ltd and that the procedure is for the registered customers of Nanatel to pay directly into the Nanatel Ltd Kadjebi merchant account domiciled at the Akatsi Branch of Nanatel Ltd which is in the custody of the Appellant. It is for this reason that Exhibit D1, found at page 218-228 of the Record of Appeal, which was tendered in evidence without objection, shows the summary of payment made by PW4, PW5 and PW6 in their various merchant accounts name, thus, ABUNDANT GRACE VENTURES, AR LINK CAF??- and E. AKPABLI VENTURES respectively, to HIS GLORY ENTERPRISE merchant SIM account.

The legal issue that emerged for determination in this case was whether or not the Accused person dishonestly appropriated the sum of GH₵234,555.95 belonging to Nanatel Ltd. From the record before the Judge, on the totality of the evidence, he found against Appellant and thus the conviction and sentence. Regardless of this Court's view that some matters ought to have inured to the benefit of Appellant, they are not sufficient to disturb the conviction as Appellant accepted that part of the amount had indeed been 'mismanaged' even if he accepted this as the boss. Ground 1(b) of the Appeal will be dismissed accordingly and ground 1(c) of the appeal has no bearing on the appeal in the candid and considered opinion of the Court.

Grounds 1(a), (d) and ground 2 of the appeal are however worth considering. The

1992 Constitution backs the presumption of innocence. The yardstick to measure the guilt or innocence of the Appellant is through reasonable doubt. Reasonable doubt outweighs Confession Statements though both are backed by Statutes. Reasonable doubt has constitutional backing through presumption of innocence.

The records as presented in this appeal does not in any way contradict the case that the appellant is a first-time offender. The Supreme Court is of the view that first-time offenders should be given a second chance to reform. In **FRIMPONG ALIAS IBOMAN V THE REPUBLIC [2012] 1 SCGLR 2297 @ 328** the Supreme Court held that "It is also generally accepted that first time offenders must normally be given a second opportunity to reform so as to play his or her role in society as a useful and law-abiding citizen." The Court further stated that "...it is desirable for a first offender to be treated differently when a court considers sentence to be imposed on a first offender vis-à-vis a second or a habitual offender".

In the light of these assertions, it becomes appropriate to factor the 'first-time offender' status of the Appellant before sentencing him. The principles upon which sentences are imposed have been stated in the case of **KWASHIE V THE REPUBLIC [1971] 1 GLR 488 AT 493**. In that case it was stated as follows: - "In determining the length of sentence, the factors which the trial Judge is entitled to consider are:

i. The intrinsic seriousness of the offence.
ii. The degree of revulsion felt by law abiding citizens of the society for the particular crime.
iii. The premeditation with which the criminal plan was executed.
iv. The prevalence of the crime within the particular locality where the offence took place, or in the country generally.
v. the sudden increase in the incidents of the particular crime

vi. Mitigating or aggravating circumstances such as extreme youth, good character and the violent manner in which the offence was committed."

Additionally, the case of **THE REPUBLIC V ADU-BOAHEN, [1972] GLR 70-78** provided some insight as to what to consider in imposing sentence when an offence is found to be grave. In that case the court stated thus:

"Where the court finds an offence to be grave, it must not only impose a punitive sentence, but also a deterrent or exemplary one so as to indicate the disapproval of society of that offence once the court decides to impose a deterrent sentence the good record of the accused is irrelevant."

Did the trial Circuit Court consider the status of the Appellant as a first time offender? The answer can be found in the Judgment of the trial court at page 463 of the Record of Appeal. The Judge considered the first-time offender status of the Appellant. However, in his opinion, there were aggravating factors that came to play in the mind of the court. Thus, the learned judge considered the amount of money that was stolen by the Appellant coupled with his position as a branch manager of Nanatel Ltd and gave him a sentence of 8 years IHL.

The maximum sentence of the offence of stealing as provided for by Section 296 (5) of the Criminal and Other Offences Procedure Act. 1969, (Act 30) is 25years IHL.

The Republic Respondent submits that the offence of stealing is a grave offence. And therefore the 8 years IHL sentence imposed by the trial Circuit Court did not occasion any miscarriage of justice and was not excessive considering the maximum number of years that a convict could serve. It was also submitted that the Appellant is not a young offender as stated by Counsel for the Appellant in the ground of appeal as Appellant

was in fact 31 years old when he committed the offence and a young offender is defined at Section 60 of the Juvenile Justice Act, 2003 ACT 653 which is inapplicable to the Appellant.

The Republic Respondent also submits that the trial judge copiously reproduced Exhibits H, H1 and J in his judgment at page 460 to 462 of the Record of Appeal and found as a fact that the Appellant indeed dishonestly misappropriated the funds of the company, Nanatel Ltd., albeit a lesser amount of GH¢54,385.00 different from what was presented in the charge sheet and facts. That the learned trial judge then rightly relied on the authority of **OBENG ALIAS DONKOR & OTHERS V. THE STATE [1966] GLR 259-261, SC** to convict the Appellant of the lesser amount he dishonestly appropriated.

I have averted my mind to the case of **OBENG ALIAS DONKOR & OTHERS V. THE STATE [1966] GLR 259-261**, the Supreme Court per the judgment of Crabbe JSC (as he then was) at page 261, stated as follows and I quote: "Therefore where a person is charged with stealing a certain sum, it is sufficient if the prosecution proved that he in fact stole part of the sum".

The Court takes note that Appellant had no Counsel at the Police Station where he denied any wrong doing. This case in the opinion of the Court required more investigation to have been conducted even though Appellant accepted that a portion of the said amount was attributable to him because he accepted responsibility as the head. Granted that the Accused person embezzled GH₵54,385.00 instead of the GH₵234,555.95 stated on the Charge Sheet, while the law on stealing will not inure to his benefit, however, the sentence in the candid and considered opinion of the Court was harsh given that he paid a part of what he says was attributable to him. Upon a total consideration of the case therefore, the Court is of the opinion that the sentence of 8 years IHL was indeed harsh as Appellant was a first time offender who was found to have mis-appropriated monies

belonging to his employers by not dealing with same according to laid down procedure. The Court will therefore grant the appeal on grounds 1(d) and ground 2 and reduce the sentence from 8 years term of imprisonment IHL to 18 months imprisonment IHL which will still serve the purpose of punishment.

(SGD.)
H/L DOREEN G. BOAKYE-AGYEI (MRS). J. ESQ.
JUSTICE OF THE HIGH COURT

CASES CITED

TUAKWA VRS. BOSOM [2001-2002] SCGLR 61 BROWN VRS. QUASHIGAH [2003-2004] SCGLR 930 OXYAIR LTD & DARKO VRS WOOD & OTHERS [2005-2006] SCGLR 1057.
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KWASHIE V THE REPUBLIC [1971] 1 GLR 488 AT 493. THE REPUBLIC V ADU-BOAHEN, [1972] GLR 70-78