

**IN THE DISTRICT COURT 2, TAMALE
HELD ON THURSDAY 27TH JULY, 2023
BEFORE HIS WORSHIP D. ANNAN ESQ.**

SUIT NO. B7/25/22

THE REPUBLIC

V

ELHAM ABDELLAH

JUDGMENT

1. In this case, accused is charged as follows:

STATEMENT OF OFFENCE

Stealing, contrary to section 124(1) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

Elham Abdellah, Unemployed, Age 25years: In the month of April, 2022 at Tamale in the Northern Magisterial District and within the jurisdiction of this Court, did steal cash sum of GHS7,690.00 the property of Mohammed Said Arafa.

FACTS OF THE CASE

2. The facts of the case as tersely given by the prosecution are that in January, 2022 the complainant and his Egyptian brothers employed the accused as a sales girl, who distributes goods to customers on credit and collects the money later for the complainant. During the month of March, 2022 accused was found to have collected cash sum of GHS300.00 from some customers but failed to pay same to the complainant. A complaint was lodged to the police where accused person's family paid the said money was paid and accused stopped working. Thereafter, complainant visited the customers who bought goods on credit from the accused and he detected that accused collected monies to the tune GHS7,690.00 from 70 customers but failed to pay same to complainant. On 9th May, 2022 a complaint was lodged again to the police and accused was arrested. During interrogation, the accused admitted the offence and pleaded for time to pay, but failed to do so.
3. Accused when arraigned before this court on the above charge pleaded not guilty.

DEFINITION OF THE OFFENCE

4. 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

5. 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.”

6. 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

7. In the instant case, accused pleaded not guilty to the charge herein. Upon such a plea, the prosecution must prove the whole of its case including the identity and knowledge of offence(s) against the accused, see **Owusu-Ansah v The State (supra)**.
8. The prosecution in proving its case against the accused called two (2) witnesses: Ibrahim Aldory Abdul Sallam (PW1) and No. 49598 D/Cpl. Atsu Adanu (PW2). Mohammed El Said Arafa filed a witness statement but he was not called to testify. Accordingly, the said witness is struck out. Prosecution also tendered in evidence the following exhibits:
 - a. Exhibit A - Investigation Cautioned Statement of Accused dated 9/5/22.
 - b. Exhibit B - Charge Cautioned Statement of Accused dated 16/5/22.
 - c. Exhibit C – A table with list of debtors.
 - d. Exhibit D – List of debtors accused allegedly took monies from.

The Prosecution's Case

9. PW1's testimony is that in January 2022 the accused was engaged as a sales girl. He added accused distributes items to customers within the Tamale Metropolis on credit and later collects the monies for complainant. He explained that in March, 2022 accused collected GHS300.00 from a customer but failed to pay the money to him. He then reported the issue to the police and accused person's family came to pay the said money. Following that, he and the other sales girl, Najat, visited the customers that accused person dealt with. According to PW1, he discovered that the accused collected monies to the tune of GHS7,690.00 from the customers but failed to pay the monies to him. He and his Egyptian brothers then called the accused person to come and explain why those monies were not accounted for, but the accused refused to show up.

10. PW2's evidence is that on 9th May, 2022 when accused was interrogated, accused admitted to collecting monies to the tune of GHS2,215.00 from 28 customers, but failed to account same to the complainant. On 11th and 12th May, 2022 he visited about 20 customers who confirmed that accused took monies from them and issued receipts for same. PW2 added that his investigation revealed that accused rather took GHS7,690.00 from the customer and failed to account for it. Hence, he caused accused to be charged and arraigned before this court. He tendered into evidence the aforementioned exhibits.

11. At the end of the Prosecution's case, the Court found that a prima facie case had been established against accused and therefore called upon accused to open her defence.

Accused Person's Defence

12. Accused in her witness statement filed on 21st March, 2023 indicated that on one occasion, the complainant, Najat and herself went to collect monies from the customers, but the sales book they were using got missing. On their way back, the were involved in an accident and as a result GHS300.00 could not be accounted for. When the matter was reported to the police, she wrote out the name of those who still owe money to the complainant. To her, the amount accounted for is GHS2,215.00 but not GHS7,690.00.

ANALYSIS OF FACTS AND LAW

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

14. In the case of **Obeng @ Donkor v The State [1966] GLR 259** it was held that, 'where a person is charged with stealing a certain sum, it is sufficient if the prosecution proves that he in fact stole part of that sum.' Crabbe JSC delivering the judgment of the court stated,

"In his judgment, the learned trial judge said: 'The sum charged against the accused in count 4 is that he stole £G321 19s. 6d. No evidence whatsoever was led to prove this sum although evidence was led which satisfies me of the appropriation by the accused of £G315. As the charge was at no time amended, I am bound to hold that the amount charged in count 4 was not proved.'. With all due respect to the learned trial judge, we think he erred in the view he took of the law. ...On these sums referred to in the judgment is a voucher covering the amount of £G315, which was taken to be part of the total sum of £G321 19s. 6d. ...Therefore, where a person is charged with stealing a certain sum, it is sufficient if the prosecution proves that he in fact stole part of that sum."

15. In the instant case, prosecution contended that accused failed to account for GHS7,690.00. The accused maintained that the amount she failed to account for is GHS2,215.00. This is what ensued when PW1 was under cross-examination:

"Q: You are aware that the sales book got missing?

A: It is there.

Q: I am putting it to you that the sales book in which the sales of the electrical appliances were recorded was missing?

A: Everything is intact, the book is there.

...

Q: *So at the time accused stopped working with you, she had handed over all the properties in her possession and the customers list?*

A: *No. She did not.*

Q: *Tell this court, what the accused did not hand over to you?*

A: *Yes, she handed over everything. But after that when Najat goes to the customers, the customers say accused has come for money.*

Q: *But you agree with me that you have not provided any evidence to suggest that customers pay money to accused which was not given to you?*

A: *Police went there and asked the customers and the customers said accused had taken monies from them.*

Q: *Apart from the mere words of these customers, there is no evidence of payment before this court to show that the accused collected monies from the customers and not given the monies to you?*

A: *The fact is the police asked them and they said accused has come for monies, that will be my evidence.*

16. Also, below is an extract when PW2 was under cross-examination:

“Q: *During the course of your investigations, did you obtain a statement of account from the complainant of those who paid money to him directly and those who owed him?*

A: *No.*

Q: *Are you aware that complainant has two sales girls to run the business, the accused person and Najat Zakaria?*

A: *Yes.*

Q: *Did you investigate Najat Zakaria?*

A: *Yes.*

Q: *You agree with me that your evidence does contain such investigations?*

A: *The other sales girl and complainant assisted me in my investigation.*

Q: *When you arrested the accused person, she mentioned to you that there were some monies with Najat, not so?*

A: *Yes. Those monies I deducted from what she (accused) was charged with.*

Q: *So it is true that there were monies with Najat which were not accounted for or paid to the complainant?*

A: *Yes. And these monies were settled between the other sales girl and the complainant.*

Q: Take a look at Exhibit D, in Exhibit D you wrote GHS8,240.00 what does that mean?

A: That was initial amount complainant quoted as the monies stolen by accused.

Q: *You also wrote GHS2,220.00 what does this represent?*

A: *That was the amount accused person wrote she collected from the customers, but could not pay to the complainant.*

Q: There is also an amount of GHS2,215.00, can you explain that also?

A: When you calculate the total of the amount accused listed, that is the exact total.

Q: *So from all these amount which one do you want the court to take as amount owed by accused person?*

A: *It is not on Exhibit D, the amount is rather GHS7,690.00.*

Q: *The complainant told you that an amount of GHS8,240.00 was not account for by the accused?*

A: *Yes.*

Q: *So how did you arrive at GHS7,690.00?*

A: *After going through this receipt books, we recognised that the real amount is GHS7,690.00*

Q: *You agree with me that you have not furnished this court with a copy of the receipt books?*

A: *That is true, but the receipts are issued to customers and they are with them, so we only went to them to take details of it.*

Q: *Exhibit D, whose handwriting is it?*

A: *The accused.*

...

Q: *Is it your testimony that the accused wrote these names out of her own memory?*

A: *The receipt book was given to her, which she listed these names from it as the only customers money which she received but could not pay to the complainant.*

...

Q: *Take a look at Exhibit D, it contains the names of customers and the amount owed that accused wrote from the books, not so?*

A: *That is not so. These are customers and amount of monies accused received from them but could not pay to the complainant.*

Q: *But you told this court that the content of Exhibit D was taken from the receipt books?*

A: *That is so.*

Q: *You agree with me that in Exhibit D, there is no amount of GHS7,690.00.*

A: *Yes. But this is the amount that accused person would only remember and after visiting the customers, it was revealed that accused collected monies from other customers which is not listed here, which all amounted to GHS7,690.00.*

Q: *You have not provided evidence in this court that the receipt from the customers indicated that accused collected GHS7,690.00 and failed to give the money to complainant?*

A: *I have visited and even took statements from them. When we were about to start the trial, they refused to come to court because they say they are market women and cannot come.*

Q: *So, it is true that there is no evidence either by way of receipts or statement from these market women which show that accused person collected an amount of GHS7,690.00 and failed to account for same to complainant?*

A: *There are statements, just that they failed to come, so we did not file them.*

Q: *If you add the amounts on Exhibit D, you arrive at a total of GHS2,220.00 is that not so.*

A: *Yes.*

Q: *But there is also an amount of GHS2,215.00 on Exhibit D, can you explain this to the court?*

A: *I earlier mentioned that when accused added it, she had GHS2,220.00. But when I checked I had GHS2,215.00. But after adding now, I have realised that that of accused's person is correct."*

17. Lastly, below is as brief as the prosecution would question the accused during cross-examination:

"Q: When you were arrested by the police on 9/5/22, you volunteered a statement to the police?

A: *Yes.*

Q: At the time of giving the statement to the police, it was not you and the investigator alone, not so?

A: *Yes.*

....

Q: Meaning you gave this statement freely not under duress?

A: I did not give the statement freely, I was under pressure.

Q: That is all for the witness."

18. Which statement is the prosecution referring to? Exhibits A, B, C or D. On all the exhibit the amount, GHS7,690.00 was not stated. Based on the above, it is clear that prosecution did not lead sufficient evidence to establish beyond reasonable doubt that the accused stole GHS7,690.00 or that the accused failed to account for same. Prosecution indeed failed to establish the basis of the GHS7,690.00. Prosecution claimed amount was after its investigation with the customer. Yet, none of the customers were called and no receipt book was tendered. Prosecution also failed to question the accused on the said GHS7,690.00. All that it sought to confirm was that the statement given by the accused was written voluntarily. Well, accused answered that she was under pressure when she was giving those statements. I wonder why the prosecution asked such a question. Was it to downplay the very statements that have been admitted in court? If Exhibits A and B, the investigation and caution statements were taken under duress, then counsel for accused should have raised an objection. But he did not. Hence, Exhibits A and B, the content therein is admitted. Neither the prosecution or accused could use the backdoor to water them down. However, from Exhibits A and B, the accused admitted to GHS2,215.00 as the amount unaccounted for. From the evidence, it became clear that the sum up should rather read GHS2,220.00. In the circumstance, I find that prosecution was able to prove beyond reasonable doubt that the accused stole GHS2,220.00 and I so hold.

19. Flowing from the case, **Obeng @ Donkor v The State (supra)**, I hereby conclude that the proof of part of the amount stolen is sufficient that accused committed the crime,

to wit stealing. The only certainty with what was stolen is that accused took GHS2,220.00 but not the GHS7,690.00. Accordingly, accused is convicted on the charge of stealing, contrary to section 124(1) of Act 29.

SENTENCING

20. Having heard counsel for the accused person and prosecution on pre-sentencing hearing, see page 450 of the Record of Proceedings. I note that the accused is a first time offender. In the circumstance, I hereby fine the accused 150p.u. and in default shall serve a jail term of 5months.

21. The accused is to compensate the complainant in the sum of GHS2,220.00 on or before, 10th August, 2023

H/W D. ANNAN ESQ.

[MAGISTRATE]

INSP. A. R. DAWUD FOR THE REPUBLIC

PAUL K. CHINATRA ESQ. FOR THE ACCUSED 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. *Brobbey & Ors v The Republic* [1982-83] GLR 608
10. *Anang v The Republic* [1984-86] 1 GLR 458
11. *Ampah & Anor. v The Republic* [1976] 1 GLR 403
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