

GHANA / JUDGMENT

REPUBLIC VRS. DARKWAH (B7/10/23)

[2023] GHADC 1318 (14 November 2023)

[2023] GHADC 1318

COURT

District Court

CASE / FILE NUMBER

B7/10/23

Source: ghalii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE DISTRICT COURT KIBI, EASTERN REGION, HELD ON TUESDAY 14TH NOVEMBER, 2023,
BEFORE HER WORSHIP MRS. JULIET OSEI – DUE DU SITTING AS A MAGISTRATE SUIT
NUMBER: B7/10/23 THE REPUBLIC VRS GEORGE DANKWA

JUDGMENT

On the 2nd February, 2023, prosecution in this case, alleging that accused person has stolen complainant's harvested cocoa, worth GHC 400.00, arraigned accused before this court with the offence of stealing, leveled against him. Accused person was duly charged as follows; "Stealing Contrary to section 124 (1) of the Criminal Offences Act 1960 (Act 29)." Accused person pleaded not guilty to the sole count of stealing after it was read and explained to him in the Twi Language. Once accused pleads as such, prosecution assumes the burden of proving the charge against accused person in accordance with sections 17 and 15 of the Evidence Act 1975 (NRCD 323.) The proof required of the prosecution in a criminal charge is also, proof beyond reasonable doubt. This is the highest standard of proof required under the 1992 Constitution and other statutes which regulate criminal trials in the country, article 19 (2) (c) and section 11 (2) of the Evidence Act, referred. Proof beyond reasonable doubt has also been explained by the superior courts to mean, that proof which makes the jury or trier of facts almost certain of the conviction of the accused. And in the celebrated English criminal case of *Miller V Minister of Pensions* [1947] 2 ALLER, 372 @ 373, Denning J as he then was explained the expression, "proof beyond reasonable doubt" as follows: "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." While proof beyond reasonable doubt is the burden that lies on the prosecution, the accused is only required to raise reasonable doubt as to his guilt, *Commissioner of Police V Antwi* [1961] GLR 408 SC, applied. Thus, whenever the accused is required by law to make a defence, sections 11(3) and 13 (2) of the Evidence Act, requires him to only raise a reasonable doubt as to his guilt. Again, it is the statute defining the offence preferred against an accused, which provides the elements of that offence, the prosecution must prove to the required standard. For the offence of stealing therefore, section 125 of Act 29 provides the essential ingredients as follows;

1. Appropriation of a thing,
2. Which appropriation was dishonest,
3. The thing belonged to another person. These elements of stealing were again discussed in the case of *Lucien V The Republic* [1977] 1 GLR 351, thus, the person who has been charged with the offence of stealing was not the owner of the thing stolen; the accused person must have appropriated the thing; and that the appropriation must be dishonest. See also the case of, *Osei Kwadwo II V The Republic* [2007 – 2008] SCGLR 1148. For the prosecution to succeed in the instant therefore, it must prove all the three settled ingredients of stealing to the required standard stated above. With this standard of proof in mind, the question I ask is whether the prosecution has been able to successfully discharge the burden it assumed under the law. What evidence has been proffered by prosecution in establishing its case against accused? The prosecution called four witnesses in all, in so proving its case, the complainant, his labourer, his wife and the investigator in the case, as (PW1, PW2, PW3 and PW4) respectively. According to the testimony of PW1, he shares a common boundary with accused as cocoa farmers in a place called Bonkame at Bososo village. On the 19th December, 2022, while both farmers were harvesting their cocoa, there was a misunderstanding between them when accused entered his farm and harvested some of his cocoa but he allowed accused to take the harvested cocoa away. On the 20th of December, 2022, that is the next day after that incident, he hired labourers to gather the harvested cocoa from the previous day's work. He then went to the far end of his farm and saw accused person with a sack loaded with some of his harvested cocoa from his (complainant's) farm. Accused was carrying the sack of cocoa gathered at three different places in complainant's farm worth, GHC 400.00, into his farm. According to complainant, he called accused by his nickname, 'Mataye' and questioned him on his nefarious activities but he ignored him. He called two of his workers, Rubben Tetteh and Atsu Agbanyo to witness the incident which they did together with his wife he went to the farm with. Complainant maintained in cross – examination that upon seeing accused person with the alleged stolen cocoa, he raised an alarm by calling him a thief. It is notable that, PW2 and PW3 are; one of the workers named by PW1 and his wife he testified that they witnessed the theft on the day of the incident. Per PW2's testimony, he was indeed hired by complainant together with Atsu and others on the day of the incident to gather and collect the harvested cocoa, as testified by complainant. According to PW2 however, accused started collecting the harvested cocoa with them before complainant recognized him and raised the alarm. Until then, the two labourers took one lane whilst accused took another in the collection of the cocoa in complainant's farm. According to PW2 they initially thought accused was also a hired hand like them so they did not challenge his activities. When the alarm was raised by complainant, they ran to the scene of the crime and saw accused with the loaded cocoa leaving complainant's farm to his. It was then that complainant informed them that he did not hire the services of accused person. The evidence of PW3 complainant's wife seems to support that of her husband and PW2 materially on the fact that, accused was seen leaving complainant's farm with the stolen cocoa. PW3 also testified that, on the previous day, her husband and accused

quarreled over the rightful owner of the cocoa trees on their common boundary and accused harvested same. PW4'S evidence was just a repetition of what all the witnesses in the case had told him since he did not witness the alleged theft neither did his investigation reveal any other fact. He tendered in evidence, accused's investigation cautioned statement, charge statement, photographs of the crime scene, and some empty cocoa pods as exhibits A to D respectively. Accused person's defence is a total denial of the alleged offence. According to accused, no incident of the nature described by complainant and his alleged witnesses happened on the 20th December, 2022. The only incident which happened between him and the complainant was their dispute over who owns the cocoa at their common boundary which occurred on the 19th December,

2022. In fact, this evidence was duly supported by accused's two children and his witnesses in this matter, who were with him on the day of the said dispute. According to accused and his witnesses also, the calling of accused as a thief by the complainant happened on the very day of the said dispute or confrontation and no other day. The above narration, is thus a summary of prosecution's case against accused person and his defence in respect of same. And after a careful consideration of the above evidence, a common theme which runs through it, that of the PW3 inclusive, is the 19th December, dispute between accused person and the complainant over the cocoa trees on their common boundary. PW2 admits that accused harvested the said cocoa amidst protest from the complainant. The most important question therefore is whether, beyond this dispute, accused person actually went into complainant's farm on the 20th December, and stole his harvested cocoa, worth, GHC 400.00. It is trite learning that, when accused person pleads not guilty to an offence charged against him, everything about the commission of the said offence is in issue including even the identity of the accused person. Accused person herein per his evidence in denial challenges the occurrence of the very offence he is charged with. Though all four prosecution witnesses insist on the commission of the offence on the 20th December, 2022, there seems to be some disparities in their various accounts on how the offence took place. Per PW1'S account, on the day of the alleged incident, he went to the farm and saw the workers gathering the harvested cocoa. He continued to the far end of the farm and that was where he saw that accused has collected his gathered cocoa in a fertilizer sack and was heading towards his, (accused's) farm. The cocoa was gathered at three different places. The question is, did complainant stand by quietly and watched accused collect the cocoa from all the three places before raising the alarm? Or, had he prior to the alleged theft identified those three groups and so could be so certain of the number and its associated value? If so, what about the numerous groups of gathered cocoa accused is alleged to have collected per PW2'S evidence before he was identified by complainant? Per the same evidence, again, upon seeing accused PW1 called the two workers to witness what has happened and he questioned accused person on same in their presence but the latter ignored him. His wife Mary also came. This evidence is at variance with that of PW2, Reuben Tetteh, one of the two workers complainant allegedly called to witness the theft and his wife as well. According to PW2, he had gone to the farm with his other colleague

earlier, that day. Whilst the two of them gathered the harvested pods in one lane, accused also did same in another lane. They therefore thought he was also hired by the complainant. It was when complainant came to the farm later, and saw accused that he raised the alarm, and the two workers and complainant's wife ran to the scene. What is surprising about this testimony is that, PW2 and his colleague had seen accused gather and or collect the cocoa in complainant's farm long before complainant allegedly came and raised the alarm, yet they never informed complainant about that. The normal reaction of any person in PW2'S position would have been to talk about accused's conduct before he was caught. Is it not also strange that, all four persons stood by even after complainant had raised the alarm and watched accused carry the alleged stolen cocoa away. Are all these people, three strong young men and a woman who claim to have seen accused carry the stolen cocoa to his farm, saying that, they could not confront accused to retrieve the stolen items from him? If they so watched accused, how then did complainant arrived at the value of GHC 400.00? Could it be that they did no such thing because there was in actual fact, no such offence committed by accused on the day in question? Similarly, the evidence of PW3 complainant's wife suggests that she did not get to know of the alleged theft through the alarm but that, she saw accused in the act. Paragraph 11 of her witness statement states as follows, "Later, when I and complainant went, to the farm, I saw accused person in complainant's farm gathered his cocoa into fertilizer sack heading to his farm." This is what PW3 however, said in cross – examination; Q. Where were you on the 20th December 2022, when you saw me collecting your cocoa? A. Where we were harvesting the cocoa at the farm. Q. When complainant called you that I was stealing his cocoa and you came what did you do? A. Nothing, I didn't do anything. Q. The people you claim complainant called to the place what did they also do? A. Nothing, we went to report the matter at the police station. So, what exactly is PW3'S story? Did she see accused steal the cocoa by herself or she was called by her husband to witness the alleged crime? This again, runs contrary to the evidence of her husband who claims that it was his alarm which brought her to the scene. Insightful further, is PW3'S answers to some questions asked by accused person during her cross – examination, stated below; Q. On the 19/12/22, you and I who got to the farm first? A. I cannot tell. Q. When I challenged your husband on harvesting the cocoa at the boundary, what Did he say? A. He said, "Mataye if you harvest the cocoa, I will arrest you. Q. After that dispute and you left, did we meet each other again? A. Yes, we me you on the way and my husband said he would arrest you and you said if he was a man, he should come closer. Could it not be that, accused person is being so blamed not for any other offence but the dispute over the common boundary and his prevention of complainant from harvesting the cocoa in that area? It has been accused person's consistent song all along that complainant had shifted the common boundary by cutting down the Ntomme planted thereto to demarcate same. He therefore prevented complainant from harvesting the cocoa in that area because he planted same before complainant moved the boundary from its rightful place. This has been accused's case from the very day he was arrested, unflinchingly. These facts were clearly stated in exhibit A, accused's investigation cautioned statement to the police dated, 28/12/22, the day of his arrest and were never

changed in his evidence before the court on 13/09/ 23 about ten months on. This is what PW4 equally, said in cross – examination on accused’s story and its consistent nature. Q. On the 28/ 12/22, the day of my arrest when you took me to the farm do you remember that, I showed you the boundary area where the dispute occurred and the Ntomme used for the demarcation cut down by the complainant? A. Yes, I remember and also saw the said tree cut down but I don’t know who cou it. Q. Do you remember I told you complainant cut the tree? A. Yes, I do but complainant denied cutting the tree. Q. Did you inquire from me where the alleged stolen cocoa was? A. Yes, I did. Q. And what was my response? A. Your response was as per your investigation cautioned statement, nothing happened on the 20/12/22. It was on the 19/ 12/ 22, that a dispute arose between the two of you over the cocoa at your common boundary area, but on the 20/12/22, nothing happened. And that you have not stolen any cocoa belonging to the complainant. Understandably, a congruous denial by defendant, through and through. It is pertinent to state here that, none of the prosecution witnesses stated the confrontation on the 19th December, in their witness statement. They had to be questioned on it by accused to admit to same. Complainant even referred to the said confrontation which his wife has clearly admitted to above, differently. Per his witness statement, complainant avers that the 19th December, misunderstanding occurred because accused entered his farm and harvested his cocoa, but he allowed him to carry same away. This is nothing but a twisted version of events on the 19th December. This version is equally at variance with the evidence of complainant’s wife under cross – examination, which evidence supports accused’s story on that day, completely. If complainant can so lie about the events of that day, what is the guarantee that, he could not do same on the 20th December, and coach his alleged witnesses to follow suit? Hence, whereas, accused has undeniably, been consistent in his defence of denial, same cannot be said of prosecution’s story. The presence in the prosecution’s case of the unclarified facts, essential to the commission of the preferred offence against accused person, puts same not beyond reasonable doubt. This court on the basis of all the above stated reasons, is of the view that, accused has not been proved to have done what prosecution set out to establish in the charge. It is therefore unsafe to convict accused person. The old English case of *Hobson* (1823) 1 Lew CC 216 held that, “It is a maxim of English law that ten guilty men should escape rather than one innocent man should suffer.” In fact, this is the rationale or philosophy behind the highest standard of proof required under the Constitution, 1992. It thus, follows without more that, any doubt in prosecution’s case should inure to accused’s benefit. On the available evidence therefore, this court finds it doubtful that accused committed the offence charged on the alleged date, at all. Consequently, I hereby pronounce accused person not guilty of the offence, leveled against him. He is accordingly acquitted and discharged. SGD H/W MRS JULIET OSEI – DUEDE ESQ DISTRICT MAGISTRATE 14/11/2023 8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ghalii.org/akn/gh/judgment/ghadc/2023/1318/eng@2023-11-14>

CASE PAGE <https://chat.esheria.ai/case-law/ghana/Stealing-district-court-2023--6a3ea50c3b1caa9129805ef5>

Prepared on 28 October 2026 · Esheria