

GHANA / JUDGMENT

REPUBLIC VRS ASAMARE & 2 OTHERS (UE/BG/DC/B7/51/2022) [2025] GHADC 41 (19 February 2025)

[2025] GHADC 41

COURT

District Court

CASE / FILE NUMBER

UE/BG/DC/B7/51/2022

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HWMNJ@DC/B-19/02/2025 CORAM: HIS WORSHIP MAWUKOENYA NUTEKPOR (DISTRICT MAGISTRATE), SITTING AT THE DISTRICT COURT, BOLGATANGA IN THE UPPER EAST REGION OF GHANA, ON WEDNESDAY, THE 19TH DAY OF FEBRUARY, 2025. CASE NO: UE/BG/DC/B7/51/2022 THE REPUBLIC VRS.

1. ANABA ASAMARE (ACQUITTED AND DISCHARGED)
2. ADONGO ANANGA (ACQUITTED AND DISCHARGED)
3. ATUBIGA AGONGONGO TIME: 09:34AM 3RD ACCUSED PERSON -ABSENT INSPECTOR BALIKI ISSAKA AMIDU FOR THE PROSECUTION RICHARD ADAZABRA, ESQ. FOR THE 3RD ACCUSED PERSON

JUDGMENT

Introduction

1. This case was initially scheduled for judgment on 23rd February 2024. The 3rd Accused person was aware of the date for judgment but failed to appear in court. A bench warrant was issued against him but this court is of the view that the Investigator herein is not making any efforts to enforce the bench warrant. In the circumstances, this court will proceed to give its judgment in *JUDGMENT-THE REPUBLIC VRS. ANABA ASAMARE & 2 OTHERS (CASE NO. B7/51/2022)* Page 1 of 11 HWMNJ@DC/B-19/02/2025 absentia in accordance with Article 19(3) of the 1992 Constitution of the Republic of Ghana.
2. The accused persons herein were brought or arraigned before this court on the 8th September, 2021 and charged for the offence of Dishonesty Receiving contrary to Section 146 of the Criminal Offences Act, 1960 (Act 29) as amended. The accused persons pleaded not guilty to the charge against them. Case of the Prosecution

3. The case of the prosecution as can be gleaned from the brief facts attached to the charge sheet filed on 8th September, 2021 is that complainants in this case are police officers and on 29-07-2021 an intelligent gathered revealed that 1st Accused person was having in his possession a stolen motor bike. 1st Accused person was arrested and one unregistered wine Apsonic Aloba motor bike was retrieved from his drinking spot at Bogrigo-Bongo. 1st accused person after his arrest could not produce any document covering the motor bike but mentioned 2nd Accused Person as the one who sold it to him at a cost of GH¢3,000.00 and led police to 2nd Accused person's house. 2nd accused person upon arrest admitted having sold the motor bike to 1st accused person but could not produce the document to support his claim of ownership. 2nd accused person also mentioned 3rd accused person as the one who sold it to him. 3rd accused person upon his arrest admitted having sold the motor bike to 2nd accused person without document. After investigations, the accused persons were charged as per the charge sheet and arraigned before his Honorable Court. *JUDGMENT-THE REPUBLIC VRS. ANABA ASAMARE & 2 OTHERS (CASE NO. B7/51/2022)* Page 2 of 11 HWMNJ@DC/B-19/02/2025 Burden of Proof
4. In a criminal case where an accused person pleaded not guilty, it is the duty of the prosecution to prove the guilt of the accused person. Article 19 clause (2)(c) of the 1992 Constitution of Ghana provides that: "A person charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty." The proof required is proof beyond reasonable doubt. The Evidence Act, 1975 (NRCD 323), outlines this in subsections 11(2) and 13(1) and Section 22 as follows: 11(2) "In a criminal action the burden of producing evidence, when it is on the prosecution as to any fact which is essential to guilt requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of the fact beyond a reasonable doubt. 13(1) In any 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. Section 22: In a criminal action a presumption operates against the accused as to a fact which is essential to guilt only if the existence of the basic facts that give rise to the presumption are found or otherwise established beyond a reasonable doubt and thereupon in the case of a rebuttable presumption the accused need only raise a reasonable doubt as to the existence of the presumed fact". *JUDGMENT-THE REPUBLIC VRS. ANABA ASAMARE & 2 OTHERS (CASE NO. B7/51/2022)* Page 3 of 11 HWMNJ@DC/B-19/02/2025
5. The Supreme Court in a unanimous decision in the case of Abdulai Fuseini v The Republic, reported in [2020] Crim LR, page 331 reiterated and affirmed the basic philosophical principles underpinning criminal prosecution in our courts as follows:- "In criminal trials, the burden of proof against an accused person is on the prosecution. The standard of proof is proof beyond reasonable doubt. Proof beyond reasonable doubt actually means "proof of the essential ingredients of the offence charged and not mathematical proof." Emphasis supplied

6. In the case of *Miller Vrs Minister of Pensions* [1947] 2 ALL ER 372 at 373 Lord Denning (as he then was) explained proof beyond reasonable doubt as follows: “It need not reach certainty but it must carry a high degree of probability, proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice ... 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, but nothing short of that will suffice.” Emphasis supplied
7. In the case of *Dexter Eddie Johnson Vrs the Republic* [2011] SCGLR 601 Dotse JSC discussed the principle of proof beyond reasonable doubt in some *JUDGMENT-THE REPUBLIC VRS. ANABA ASAMARE & 2 OTHERS (CASE NO. B7/51/2022)* Page 4 of 11 HWMNJ@DC/ B-19/02/2025 detail and cited the case of *Woolmington Vrs DPP* [1934] AC 462 where Lord Sankey made the following statement: “Throughout the web of the English Criminal Law, the golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner’s guilt – if at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner – the prosecution has not made out the case and the prisoner is entitled to an acquittal. 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.” See the case of: *Commissioner of Police Vrs Isaac Antwi* [1961] GLR 408 where the Woolmington principle was applied.
8. See also the following cases on the burden of proof in criminal cases: *Frimpong @Iboman v The Republic* [2012] 1 SCGLR 297, *Gligah & Anr v The Republic* [2010] SCGLR 870, *Tetteh v The Republic* [2001-2002] SCGLR 854, *Francis Yirenkyi v Republic* [2017-2020] 1 SCGLR 433 at 457 and 464-466, just to mention a few. The Ingredients of the Offence of Dishonesty Receiving, Evaluation of Evidence and Legal Analysis
9. In an attempt to prove a case beyond reasonable doubt every prosecutor is required to prove the ingredients of the offence the Accused is charged with. *JUDGMENT-THE REPUBLIC VRS. ANABA ASAMARE & 2 OTHERS (CASE NO. B7/51/2022)* Page 5 of 11 HWMNJ@DC/ B-19/02/2025 On the charge of Dishonesty Receiving –sections 146, 147 (1) and 148 (1) of Act 29 provides as follows: “Section 146-Dishonestly receiving property A person who dishonestly receives property which that person knows has been obtained or appropriated by a criminal offence punishable under this Chapter, commits a criminal offence and is liable to the same punishment as if that person had committed that criminal offence. Section 147(1)-Dishonestly receiving (1) A person commits the criminal offence of dishonestly receiving property which that person knows to have been obtained or appropriated by a criminal offence, if that person receives, buys, or assists in the disposal of the property otherwise than with a purpose to restore it to the owner. Section 148 (1)- Possession of stolen property

- (1) Where a person charged with dishonestly receiving is proved to have had in possession or under control, anything which is reasonably suspected of having been stolen or unlawfully obtained, and that person does not give an account, to the satisfaction of the Court, as to the possession or control, the Court may presume that the thing has been stolen or unlawfully obtained, and that person may be convicted of dishonestly receiving in the absence of evidence to the contrary.” *JUDGMENT-THE REPUBLIC VRS. ANABA ASAMARE & 2 OTHERS (CASE NO. B7/51/2022)* Page 6 of 11 HWMNJ@DC/B-19/02/2025 See also the following authorities on the offence of dishonestly receiving: Hammah Mohammed Vs. The Republic [2020]DLCA10036, The book entitled “Contemporary Criminal Law in Ghana, 3rd edition by Dennis Dominic Adjei (JA) Pages 360-364 and The book titled “Criminal Law in Ghana” (Ghana Publishing Corporation) 1985 by P. K. Twumasi (of blessed memory) at pages 352-358.
10. From the above authorities we can glean the ingredients of the offence of dishonestly receiving as follows: (a) That the accused received property which he knew to have been obtained or appropriated by crime and (b) That the receipt of the property was dishonest. In other words, for the prosecution to succeed in a charge of dishonestly receiving there must be clear and abundant evidence that: i. ii. iii. The item or thing in question was stolen or misappropriated. The item was in the possession or control of the accused. The Accused could not give a reasonable explanation of how he came by the item.
11. In the instant case, it is the prosecution's case that the accused persons in October 2020 dishonestly received unregistered wine Apsonic Aloba motor bike which they knew to have been obtained by means of crime. Prosecution in bid to prove its case beyond reasonable doubt called one witness, No. 54606 G/CLP. Kontor Isaac, who testified that on 29-07-2021 an intelligent gathered, revealed that 1st accused person was having in his possession a stolen motor bike. In view of that a team of investigators including himself proceeded to Bogrigo a suburb of Bongo to ascertain the facts. 1st accused *JUDGMENT-THE REPUBLIC VRS. ANABA ASAMARE & 2 OTHERS (CASE NO. B7/51/2022)* Page 7 of 11 HWMNJ@DC/B-19/02/2025 person was arrested and one unregistered wine Apsonic Aloba motor bike was retrieved from his drinking spot and could not produce any document covering the motor bike. 1st accused person mentioned 2nd accused person as the one who sold the motor bike to him at a cost of GH¢3,000.00 and led police to his house for his arrest. 2nd accused person admitted having sold the motor bike to 1st accused person but could not produce any document to support his claim of ownership. 2nd accused person also upon his arrest mentioned 3rd accused person as the one who sold the motor bike to him at a cost of GH¢3,000.00 without any document. 3rd accused person in his arrest admitted having sold the motor bike to 2nd accused person without any document. 3rd accused person claimed the motor bike was given to him by a motor mechanic but this allegation was found to be false. He stated that he obtained investigation cautioned statements and charged statements from accused persons in the presence of independent witnesses and thereafter they were arraigned before this court. He tendered in evidence the following documents: Investigation Cautioned Statement and Charge Statement of 1st Accused person as Exhibits A and A1

respectively, Investigation Cautioned Statement and Charge Statement of 2nd Accused person as Exhibits B and B1 respectively, Investigation Cautioned Statement and Charge Statement of 3rd Accused person as Exhibits C and C1 respectively, and Photograph of wine Apsonic Aloba motor bike as Exhibit D.

12. After close of prosecution's case, prosecution could not make out a sufficient case against the 1st and 2nd accused persons to be called upon to open their defence. 1st and 2nd Accused persons were accordingly acquitted and discharged on 19th May, 2023. However, a sufficient case or prima facie case *JUDGMENT-THE REPUBLIC VRS. ANABA ASAMARE & 2 OTHERS (CASE NO. B7/51/2022)* Page 8 of 11 HWMNJ@DC/B-19/02/2025 was made against the 3rd accused person and he was therefore called upon to open his defence.
13. 3rd accused person testified in his evidence in chief as follows: "When I was arrested I handed over the matter to my lawyer to do it for me. I know nothing about the motor bike. I think the complainant in the first case knows something about the motor bike. I also think the A1 might have gotten the document through him. That is the end of my case."
14. During cross examination of the 3rd accused person by prosecution on 6th July, 2023 he admitted selling the motor bike to the 2nd accused person. He also stated he does not know anything about the motor bike when he was asked about the documents covering the motor bike. Also in Exhibits C and C1 3rd accused person stated that he sold the motor to 2nd accused person without documents. Besides, when the 3rd accused person was asked to cross examine the prosecution's witness, he said he had no questions for him.
15. It is noteworthy that there is a clear contradiction between the 3rd Accused person statement in Exhibits C and C1 as well as 3rd Accused evidence in court. Thus at one point he stated he does not know anything about the motor bike, at another point he said he sold the motor bike to the 2nd Accused person without documents. Under section 80 of the Evidence Act, 1975 (NRCD 323), matters which the court may take into consideration in determining the credibility of a witness include a statement or conduct which is consistent or inconsistent with the testimony of the witness at the trial. The law is well settled that a person whose evidence on oath was *JUDGMENT-THE REPUBLIC VRS. ANABA ASAMARE & 2 OTHERS (CASE NO. B7/51/2022)* Page 9 of 11 HWMNJ@DC/B-19/02/2025 contradictory of a previous statement made by him, whether sworn or unsworn, was not worthy of credit. Thus, in the case of Odupong v Republic [1992-93] GBR 1038 the Court of Appeal held on this principle as follows:- "The law was well settled that a person whose evidence on oath was contradictory of a previous statement made by him, whether sworn or unsworn, was not worthy of credit and his evidence would be of no probative value unless he gave a reasonable explanation for the contradiction." See also Gyabaah v Republic [1984-86] 2 GLR 416 and Kuo-den alias Sobti v Republic [1989-90] 2 GLR 203 SC were referred to

16. The inconsistencies in Exhibits C, C1 and evidence of the 3rd Accused person in court lead to the irresistible conclusion that he is not a credible person and his evidence is to be taken with a pinch of salt. The court finds the explanation of the defence unacceptable or not reasonably probable and holds that the 3rd accused person dishonestly received unregistered Apsonic Aloba Motor Bike which he knew to have been stolen.

Conclusion

17. Having examined the whole evidence of the prosecution and Defence on record, this court is of the considered opinion that the prosecution has discharged its burden of proof beyond reasonable doubt regarding the charge of Dishonestly Receiving against the 3rd accused person. Thus, the ingredients of the offence of dishonestly receiving were proved beyond reasonable doubt. In other words, apart from the defence's explanation, this court is satisfied on *JUDGMENT-THE REPUBLIC VRS. ANABA ASAMARE & 2 OTHERS (CASE NO. B7/51/2022)* Page 10 of 11 HWMNJ@DC/B-19/02/2025 a consideration of the whole evidence that the 3rd accused person is guilty of dishonestly receiving unregistered Apsonic Aloba Motor bike which he knew to have been obtained through crime. Accordingly, the 3rd accused person is hereby found guilty of Dishonestly Receiving contrary to section 146 of the Criminal Offences Act, 1960 (Act 29) and he is hereby convicted for the crime of Dishonestly Receiving. Sentence
18. Some of the principles that govern sentencing are: the seriousness of the offence, the premeditation with which the criminal plan was executed, the prevalence of the crime within the locality in particular and the country in general, the degree of revulsion felt by the law abiding citizens of the society, mitigating circumstances such as extreme youth, first offender and good character. See the cases of Kwashie v The Republic [1971]1 GLR 488, Adu Boahene v The Republic [1972]1 GLR 70, and Kamil v The Republic [2011] SCGLR 300.
19. This court has considered the nature or facts of this case, the fact that the 3rd accused person is a first time offender, the general overcrowding in the prisons and being guided by Ghana Sentencing Guidelines as well as principles governing sentencing; the 3rd Accused person is hereby sentenced to pay a fine of four hundred (400) Penalty Units (GHC4,800.00) and in default six (6) months imprisonment with hard labour. The prosecution is to ensure the Bench warrant issued about a year ago is enforced. (SGD H/W MAWUKOENYA NUTEKPOR (DISTRICT MAGISTRATE) .) *JUDGMENT-THE REPUBLIC VRS. ANABA ASAMARE & 2 OTHERS (CASE NO. B7/51/2022)* Page 11 of 11

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