GHANA / JUDGMENT

The Republic Vrs Kokroko [2023] GHACC 123 (13 January 2023)

[2023] GHACC 123

COURT
Circuit Court

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IN THE CIRCUIT COURT HELD AT KPANDO ON FRIDAY THE 13TH DAY OF JANUARY, 2023, BEFORE HIS HONOUR FRANCIS ASONG OBUAJO ESQ., THE CIRCUIT COURT JUDGE. CC / 42 / 2022 THE REPUBLIC VRS THOMAS KOKROKO ACCUSED PERSON – PRESENT PROSECUTOR C / INSPT. BENJAMIN AWUNYO

JUDGMENT

Accused person was arraigned before this court charged with stealing contrary to section 124 (1) of criminal offences Act, Act 29 of 1960. Accused pleaded not guilty to the offence in open court. The summary of the facts are that, the complainant Esinam Dzeble, a trader of Kpando-Konda while accused, unemployed, stays at Kpando Lorry Station. On the 06-01-2022 at about 7: 00pm, complainant was parking her goods to go home after the day's work. Accused came and stood by complainant's umbrella stand, then pulled it down and removed the stand into his sack and was going away with it. Complainant raised an alarm and accused was arrested and handed over to the police. Accused denied the offence during investigations but was charged with the offence. With the not guilty plea to the offence as charged, the prosecution then assumed the onus of adducing credible evidence to establish the guilt of the accused person beyond reasonable doubt to secure the conviction of the accused as required under Sections 11 (2) and 13 (1) of the Evidence Act 1975 (NRCD 323). It was held in YEBOAH AND Page 1 of 7 OTHERS VRS THE REPUBLIC (CONSOLIDATED) (1972) 2 GLR 281 – 293 Per ATA BADU J (as he then was) that: "the guilt of the accused, must be proven with the degree of certainty required by law. The accused has no burden on him to prove his innocence. It is the prosecution which must prove the guilt of the accused". The prosecution called two witnesses who filed their witness statements in proving the offence charged. Esinam Dzeble tendered her statement into evidence under oath as PW1. She stated that at about 7:40pm on the 06-01-22 she was packing her umbrellas which she gives out for rent into her shop. She heard some noise around the shop. She went to check what was going on and saw people around the accused holding one of her umbrella stands in his sack with his other belongings. PW1 then asked the accused where the umbrella was, as there was no umbrella on the stand. Accused then went to show her where the umbrella was and she went for it. Under cross examination, PW1 maintained that accused stole the said umbrella. D/Sgt. Amin

Ibrahim of Kpando District Police C. I. D. tendered his witness statement into evidence as PW2 that, this case was referred to him to investigate on the 06-01-22. PW2 added that PW1 told him of constant theft of her umbrella stands and it was the accused who stole them all. Accused was arrested by other market women and handed him over to the police. He added that accused denied stealing the other umbrella stands except the instant one. Accused has been charged for that and tendered accused's caution and charged statements into evidence as Exhibits A and A1 respectively. The umbrella stand admitted into evidence as Exh. B. Accused did not cross examine PW2 when given the right to do so. Accused was ordered to open his defence after the close of prosecution's case as prima facie case over the elements of the offence had been made against him. Page 2 of 7 DEFENCE OF THE ACCUSED In his defense accused elected to make a statement from accused box that he went to remove the said umbrella stand on the day at the market as he thought it was for his mother who also rents umbrella at the market. Accused stated further that his mother equally rents umbrella at the market. Rain was about to fall at that time and his mother had gone away and so he went to remove the umbrella stand and a certain woman saw him and said he has stolen it. She then called PW1 and he was later taken to the police station. Accused did not call any witness when given the opportunity to do. In Exhibit A, accused said he went to stand by the complainant's umbrella stand at about 7: 00pm on 06-01-22 while she was parking her goods. Immediately he pulled the umbrella stand down, she raised alarm that he was stealing same and caused his arrest. In exhibit A1, accused relied on exhibit A. THE LAW AND ANALYSIS Section 124 91) of criminal offences Act, 1960 Act 29 states that:

(1) A person who steals commits a second degree felony". Section 125 of Act 29 / 60 defines stealing as: "the dishonest appropriation of a thing of which the person is not the owner". Section 122 (2) of Act 29 defines appropriation as: "any moving, taking, carrying away or dealing with a thing with the intent that a person a person may be deprived of the benefit of the ownership of that thing or of the benefit of the right or interest in the thing, or in its value or proceeds, or part of that thing". The three essential elements of stealing were identified in BROBBEY AND OTHERS VRS THE REPUBLIC (1982-1983) GLR 608-616AS: Page 3 of 7 I. That the person changed must have appropriated the thing allegedly stolen. II. That the appropriated must have been dishonest. III. That the person changed must not be the owner of the thing allegedly stolen Section 120 (1) of 29 explains that; "an appropriation of a thing is dishonest;

a. If it is made with an intent to defraud, or

b. If it made by a person without a claim of right and

c. With a knowledge or belief that the appropriation is without the consent of some person for whom he is a trustee or who is the owner of the thing, or

d. That the appropriation would if known to the other person, be without the consent of that other person". Form the decided cases and the laws referred thereto, the prosecution must proof beyond reasonable doubt the following elements of stealing to secure the conviction of the accused person: I. Dishonesty II. Appropriation III. Property not belonging to the

accused. The evidence of PWI was that of about 7:40pm on the 06-01-2022 she went to see those making the noise at where she was packing her umbrellas, she saw accused holding one of her umbrella stands in his sack together with his other belongings. It must be noted that this piece of evidence was not cross examined on and so was not discredited. Exhibit A, accused caution statement, he said he did not steal the umbrella stand of PW1. Adding that at about 7:00pm on that day and place he went and stood by the umbrella stand that PW1 raised alarm of stealing it and he was arrested. Here again accused did not challenge or object to this piece of evidence From the prosecution's Page 4 of 7 evidence at the hearing, accused person from exhibit 'A' went and stood by the said umbrella stand first. Then he decided to pull it down. For going to stand by the umbrella stand and then pulling it down as accused did, is highly indicative of his intention to appropriate the said umbrella stand. PW1 said she saw the umbrella stand in accused sack upon getting to where the noise was coming from. That also shows that accused had moved and taken the said umbrella stand at that time. It is therefore my finding of fact that accused person had the intention of stealing the umbrella stand on the day by his act of relating with the umbrella stand by standing by it before he actually pulled it down. In the case of ANING VRS THE REPULIC [1984-86] 2 GLS 85 where the appellant and another had been convicted of stealing roofing sheets belonging to the Ghana Armed Forces by a General Court-Martial. In dismissing the appeal, the Court held that on the evidence, the appellant intended to steal the roofing sheets and since the law of Ghana did not require a 'carrying away' before appropriation could be established; he was guilty of stealing the roofing sheets. Base on the analysis so far done, it is my candid view that accused person had the requisite and sufficient intention and acted as such as established by the prosecution that accused stole the umbrella stand in issue on the day. I am not oblivious of accused defense statement made that he thought the umbrella stand was for her mother who also rents out same just as PW1. That was why he went for it. This piece of evidence of the accused is considered as a rehearsed one and an afterthought and same is hereby rejected. If in deed, the mother of accused rents out umbrella stand s as he wanted the court to believe, he should have called the said mother to so testify in court but he did not call any witnesses. It is my candid finding of fact at this stage that accused person on the said date and place at about 7:30 pm went to stand by one particular umbrella stand belonging to PW1 who was busily packing her other wears at the market. At the blind side of PW1, accused pulled down the umbrella and removed the stand into a sack he Page 5 of 7 was carrying for that purpose and was about to carrying it away before those standing by raised an alarm that attracted PW1 to the scene. PW1 identified the umbrella stand in accused's sack and accused led PW1 to where he removed the umbrella top to. Accused was subsequently arrested and arraigned before this court. It is hereby my consideration that the prosecution has adduced credible evidence in proving the ingredients of the offence of stealing beyond reasonable double to secure the conviction of the accused. Accused is hereby found guilty of this offence. BY COURT Does accused have anything to say before sentence is passed? Oliver Atsu Abada Esq. an officer and a friend of the Court prayed for mitigation by asking that accused be bonded to be of good behavior rather than been given custodial punishment. Adding that the umbrella stand was recovered from accused in good

shape at the crime scene so there was no aggravation. BY COURT Is accused known to the court. Prosecutor said accused is not known to the court. BY COURT In sentencing the accused the court has taken into consideration the plea on mitigation that was put in him, the fact that the umbrella stand received in good shape and value. Accused is hereby ordered to sign bond of good behavior for two years and in default of that that good behaviour shall go to prison for three years. SGD. FRANCIS ASONG OBUAJO CIRCUIT COURT JUDGE Page 6 of 7 13/1/23 Page 7 of 7

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