

GHANA / JUDGMENT

The Republic Vrs Ackon [2023]

GHADC 250 (24 February 2023)

[2023] GHADC 250

COURT

District Court

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IN THE DISTRICT COURT HELD AT WASA AKROPONG ON FRIDAY THE 24TH
DAY OF FEBRUARY, 2023, BEFORE HIS WORSHIP MR. BRIGHT A. AKOANDE
ESQ, DISTRICT MAGISTRATE
COURT CASES NO. 43/2021
THE REPUBLIC

VRS:

SAMUEL KELVIN ACKON

Chief Inspector Veronica Tibson for the Republic

No legal representation for the accused

JUDGMENT

The accused has been charged with stealing, contrary to section 124 (1) of the Criminal Offences Act, Act 29 of 1960. The accused having denied the offence, the burden is put on the prosecution to adduce sufficient admissible evidence to establish the ingredients of the offence. The guilt of the accused must be proved beyond reasonable doubt; see *Miller V Minister of Pensions* [1942] 2 All ER 372 per the indomitable Lord Denning. Also, see sections 11(2) and 13 (1) of the Evidence Act, 1975 (Act 323). The accused for his part only has to introduce evidence which creates a reasonable doubt in the mind of the court regarding the prosecution's case. The relevant facts of the case are that the accused was the Wasa Akropong District Manager of Sika Aba Buyers Limited, a licensed cocoa buying company. During the 2019 – 2020 cocoa season, the company gave the Accused GH¢618,000.00 to purchase one thousand and two hundred bags of cocoa beans for the company. The prosecution alleged that the accused stole GH¢82,400.00 of the amount equivalent to 160 bags of cocoa beans. Section 124 (1) of Act 29 provides that a person who steals commits a second degree felony. Section 125 of Act 29 defines stealing. It provides that a person steals who dishonestly appropriates a thing of which that person is not the owner. The essential elements of the offence of stealing are:

1. The person charged must have appropriated the thing allegedly stolen,
2. The appropriation must be dishonest and
3. The person charged must not be the owner of the thing allegedly stolen; see *Brobbey and Others V the Republic* [1982-83]. The prosecution called three witnesses who testified in proof of the offence. At the close of the prosecution's case, there was undisputed evidence that the accused could not account for 160 bags of cocoa beans equivalent to GH¢82,400.00 belonging to Sika Aba Buyers Limited. The accused even admitted under cross-examination that the amount was GH¢97,000.00. Based on the above admitted evidence, the court ruled that the prosecution had made a prima facie case against the accused and so the accused was directed to open his defence. The accused thereafter opened his defence. He testified and also called three witnesses who testified for him. The defence or the explanation of the accused as contained in his previous statements to the police and his witness statement as well as the witness statements of DW1, DW2 and DW3 is that the outstanding 160 bags of cocoa beans equivalent to GH¢82,400.00 are still with cocoa purchasing clerks whom he engaged to purchase the cocoa beans. In other words, the accused had paid the GH¢82,400.00 to purchasing clerks to buy the cocoa beans but they were yet to supply him with the cocoa beans. The accused tendered Exhibit 3 which is the list of the purchasing clerks he engaged to purchase the cocoa beans. Exhibit 3 is properly prepared, signed and has the stamp of the Sika Aba Buyers Limited. P. W1 who lodged the complaint against the accused, said repeatedly when under cross-examination that if the accused had provided him with the list of purchasing clerks, he (P. W1) would not have lodged the complaint or reported the matter to the police. The accused also tendered in evidence Exhibit 5 series. Exhibit 5 series is personal account printed on the letter head of Sika Aba Buyers Limited. It contains the names of the purchasing clerks the accused engaged as well as the balances of bags of cocoa beans they still owe the company. The prosecution subjected the accused to rigorous cross-examination but the accused stood his grounds. His evidence in court is consistent with his previous statements given to the police. The evidence of DW1, DW2 and DW3 has also corroborated the evidence of the accused in material in particular. DW1, DW2 and DW3 testified that they were some of the purchasing clerks whom the accused engaged to purchase the cocoa beans for Sika Aba Buyers Company Limited. They stated in their witness statements the number of bags of cocoa beans they were yet to supply to the company; see the witness statements of DW1, DW2 and DW3. The names of DW1, DW2 and DW3 are contained in Exhibit 3. The number of outstanding bags of cocoa beans these witnesses or purchasing clerks are yet to supply to the company are also contained in Exhibit 5 series. Again, the number of cocoa beans these purchasing clerks supplied to the company are also contained in Exhibit 5 series. I take judicial notice of the notorious fact that it is the custom of the cocoa purchasing business that cocoa purchasing clerks are engaged to purchase cocoa beans. This explains why P W1 conceded that if the accused had provided him with the list of purchasing clerks, he (the former) would not have reported the case to the police. The crucial question now is, is the accused's explanation reasonably probable so as to exonerate him of the offence? The law is settled that if the explanation of

the accused is acceptable or is reasonably probable, the court must acquit and discharge him; see state V Sowah and Essel [1961] GLR 743. The evidence of the accused clearly shows that he had paid the money to the purchasing clerks to purchase the cocoa beans for the company. The accused has thus raised a reasonable doubt in the evidence of the prosecution regarding his guilt. In the instant case, I am satisfied that the explanation of the accused is reasonably probable and acceptable to the court. For the reasons given above, I do not find the accused guilty of the offence. He is acquitted and discharged. DISTRICT MAGISTRATE (SGD) BRIGHT A. AKOANDE

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