

GHANA / JUDGMENT

Tweneboah & Anor. V Ghana Grid Company Ltd (AR/OB/DMC/A1/10/2022)

[2025] GHADC 52 (21 January 2025)

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COURT
District Court

CASE / FILE NUMBER
AR/OB/DMC/A1/10/2022

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THE REPUBLIC V JOHN KORLETEY IN THE DISTRICT COURT HELD AT ADANSI FOMENA ON WEDNESDAY, THE 29TH DAY OF JANUARY, 2025 BEFORE HER WORSHIP MRS. LINDA FREMAH BOAMAH-OKYERE CASE NO. CC/82/2024 THE REPUBLIC V JOHN KORLETEY RULING ON SUBMISSION OF NO CASE

1. There is a plethora of cases to the effect that it is well within the right of Counsel who represents an accused person to file a submission of no case after close of prosecution's case. See the cases of Commissioner of Police v Osei Yaw Akoto [1964] GLR 231 and Atsu Charan Kole v The Republic Criminal Appeal No. H2/5/2008, delivered on 5th June, 2018. However, this right is not only limited to accused persons who have legal representation. After close of prosecution's case, the court is enjoined to consider the issue of whether or not a prima facie case has been established against the Accused person. It is instructive to note the provision in the Practice Direction (Disclosures and Case Management Page 1 of 10 THE REPUBLIC V JOHN KORLETEY in Criminal Proceedings) dated 30th October, 2018, paragraph 21 which states that "...at the close of the case for the prosecution, the Court shall, on its own motion or on a submission of no case to answer, give a reasoned decision as to whether the prosecution has, or has not led sufficient evidence against the Accused as to require him/her to open his defence." (Emphasis mine). The court therefore has a duty to evaluate the evidence led by the prosecution to determine if a case is sufficiently made out against the accused person to require him to open his defence.
2. Section 173 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) states as follows: "Where at the close of the evidence in support of the charge, it appears to the Court that a case is not made out against the accused sufficiently to require him to make a defence, the Court shall, as to that particular charge, acquit him." In the oft-cited case of State v Ali Kassena (1962) GLR 144-154, the Supreme Court laid down the principles governing a submission of no case. The Court stated that a submission that there is no case to answer might properly be made and upheld:

- a. When there has been no evidence to prove an essential element in the alleged offence; Page 2 of 10 THE REPUBLIC V JOHN KORLETEY
- b. When the evidence adduced by prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict upon it. See also Sarpong v The Republic [1981] GLR 790.
3. Generally, the burden of proof on prosecution in criminal cases, is proof beyond reasonable doubt as per section 13 of the Evidence Act, 1975 (Act 323). One can determine whether or not this standard of proof has been attained only after evaluating the evidence led by both prosecution and defence. At this stage of consideration of submission of no case to answer, the standard of proof cannot be proof beyond reasonable doubt as the court is not yet privy to the evidence of defence. The law is that the standard of proof at the close of the case for the prosecution is the establishment of a prima facie case as opposed to proof beyond reasonable doubt. See the case of Kwabena Amaning alias Tagor and Another v The Republic (200) 23 MRLG 78. 4. In the instant case, accused person has been charged with stealing contrary to section 124(1) of the Criminal and Other Offences Act, 1971 (Act 29) on the back of the facts reproduced below as presented by prosecution: Page 3 of 10 THE REPUBLIC V JOHN KORLETEY “Complainant is a secretary to the Adansihene Nana Opagyakotwe Bonsra Afriyie II and a resident of Adansi Fomena. Accused is a teacher and a resident of Adansi Asokwa. In the month of March 2023, the Adansihene engaged the Complainant and the Accused to seek permit from the Forestry Commission at Bekwai on his behalf to cut wood logs from the forest for the construction of school desks, hence did same. They then went to Sarponso town and sought for support from the community for labour cost. The community then provided them with chainsaw operators and carriers of the woods for the work to be done. The community also formed a committee to supervise everything about the project to proceed on as planned. The committee was able to see to it that about 400 wood logs were cut by the chainsaw operators who were brought in for the work. Somewhere in the month of December 2023, the committee realised that accused has conveyed 168 wood beams which were to be used for the project from Adansi Sarponso to Dua Npro sawmill at New Edubiase without the consent of the Complainant and the committee as well. Complainant got informed that Accused had stolen 168 sawn beams valued at GHC.11,760. 00 purposely for the project. Without delay, Complainant informed Nana Opagyakotwe Bonsra Page 4 of 10 THE REPUBLIC V JOHN KORLETEY Afriyie II of the issue which he was instructed to report the matter to the police. Complainant made a report to the police and Accused was arrested to assist police with investigation. After police investigations, Accused was charged with the offence on the charge sheet and put before court”. The said Section 124(1) of Act 29 provides as follows that “A person steals who dishonestly appropriates a thing of which that person is not the owner”.

5. When accused person pleaded not guilty to the charge on 14-02-2024 before the court, differently constituted, prosecution was called upon to prove their case. They filed witness statements for five (5) witnesses including the Complainant but eventually abandoned three of them. They relied on the evidence of the Complainant and the investigator in prove of their case.
6. For the offence of stealing, the prosecution is required to establish the following ingredients as outlined in the case of *Cobbina v The Republic* (J3 7 of 2019) [2020] GHASC 4 (19th February 2020),
 - a. The subject matter of the theft must belong to another person
 - b. The accused must appropriate it
 - c. The appropriation must be dishonest Page 5 of 10 THE REPUBLIC V JOHN KORLETEY
7. According to PW1, himself and the Accused person were appointed by the Adansihene to work on procuring wood for the construction of school furniture on his behalf. It is his case that the missing wood belongs to the Adansihene and not to him or the Accused person. The Accused person admits in his investigation caution statement that indeed he together with the Complainant were tasked to obtain wood from Sarponso for the development of Adansiman. According to the Accused, the town folks were unwilling to work for free so he agreed with the Complainant that he would solely fund the cutting of the wood so that he would compensate himself with a portion of the wood and release the remainder for the project. It is pertinent to note that this alleged agreement was not disputed by the Complainant. PW1 also admits in paragraph 5 and 6 of his witness statement that the operators he paid did not do the work. He stated also that the only person who did the work was one operator by name Mr. Oti who was introduced to him by the Accused person.
8. The Accused person indicated that he had spent over GHC.6,000.00 when he was invited by the police following a complaint lodged by PW1. He stated further that he had conveyed 36 wood beams and the rest had been left at the site. PW1 did not give any evidence as to how many Page 6 of 10 THE REPUBLIC V JOHN KORLETEY beams had been cut out of which the Accused had allegedly stolen 168, however, PW5 testified that in his investigations, he found that one of the operators cut 100 beams whilst another cut 136 beams. This would make it a total of 236 beams. As already stated, PW1 failed to give any evidence as to the number of wood beams that was cut, therefore, the court will rely on the undisputed figure of 236 beams in total. PW5 corroborated the evidence of the Accused that he conveyed 36 beams from the site. This would then also mean that there should be 200 beams of wood left at the site but the investigator stated in paragraph 15 of his witness statement that there are presently 146 pieces of wood there. Therefore, even though the Complainant alleged that 168 beams had been stolen, really, by this analogy, it is 54 beams that have gone missing. Even the whereabouts of those 54 beams were hinted by PW5 to have been left in the forest. During cross examination, this is what ensued between Accused person and PW5: Q. Do you agree that when we went to Sarponso we saw 146 wood beams A. The wood we counted at

the chief's palace and the bush were 146 in total but the operators informed us that there were more in the forest which the carriers were yet to bring Page 7 of 10 THE REPUBLIC V JOHN KORLETEY

9. There was no evidence led to prove that the said 168 beams of wood are missing and certainly there is no proof that the Accused person has stolen those 168 beams of wood. Prosecution's own evidence shows that the 36 beams of wood that were conveyed by Accused person were not dishonestly appropriated but they were conveyed pursuant to an earlier agreement between the Accused and the Complainant. Of particular interest is paragraphs 10 and 11 of the Complainant's witness statement. He states as follows: "10. The Odikro of Sarponso called and informed me that the accused has conveyed 168 beams of wood and when he was questioned about it, he told them he was sending them to Nana Adansihene." "11. I went to meet the elders and project committee members which they also confirmed what the Odikro told me."
 1. This piece of evidence is in the nature of one that requires corroboration, yet, neither the said Odikro, the elders nor the project committee members showed up to corroborate this piece of evidence. There was no explanation as to why these material witnesses were not called and there was no opportunity for the Accused person to confront his real accusers, i.e., the Odikro and Page 8 of 10 THE REPUBLIC V JOHN KORLETEY elders of Sarponso. The evidence of the Complainant, in my opinion, does not pass the credibility test and same does not amount to a prima facie proof of the guilt of the Accused person for it is trite learning of law that a bare allegation of a fact with no proof of same does not amount to a satisfaction of the burden of proof and evidential burden on the part of the party who makes that assertion. See the case of *Klah v Phoenix Insurance Co. Ltd.*
- [2012] 2 SCGLR 1139, where the court averred that "where a party makes an averment capable of proof in some positive way e.g. by producing documents, description of things, reference to other facts, instances and his averment is denied, he does not prove it by merely going into the witness box and repeating that averment on oath or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances from which the court can be satisfied that what he avers is true".
10. I am of the view also that none of the essential elements of the offence of stealing has been proven by prosecution. There is no proof that the Accused person stole the beams of wood if any were missing at all. I Page 9 of 10 THE REPUBLIC V JOHN KORLETEY therefore find that no prima facie case has been established against the Accused person to warrant him being called upon to open his defence.
 11. For the foregoing reasons, Accused person is acquitted and discharged on the charge of stealing brought against him. SGD MRS. LINDA FREMAH BOAMAH-OKYERE MAGISTRATE Page 10 of 10

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Prepared on 27 October 2026 · Esheria