

GHANA / JUDGMENT

THE REPUBLIC VRS QUAYE (B7/06/2024) [2024] GHACC 251 (30 May 2024)

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IN THE CIRCUIT COURT HELD AT KUMAWU-ASHANI ON WEDNESDAY THE 30TH DAY OF MAY, 2024 BEFORE HIS HONOUR JONATHAN ODARTEY, CIRCUIT COURT JUDGE TIME: 12:22 PM CASE CALLED COURT CASE NO. B7/06/2024 THE REPUBLIC VRS. DAVID QUAYE

JUDGMENT

The accused herein was charged on one count of: Stealing contrary to section 124(1) of criminal and other offences Act 1960 (Act 29). The particulars of the offences as set out in the charge sheet is as follows: David Quaye age 26 years, air conditioning mechanic, for that on the 23rd day of May, 2024 at about 12:00 hours in the Ashanti Region Circuit Court and within the jurisdiction of this court you dishonestly appropriated 24mm of 4*35mm copper cable valued at ₵13,512.00 the property of Doummar Electrical Company. Plea of the Accused taken in twi language which he understood by his admission. Accused pleads guilty simplicita to the charge of stealing contrary to Section 124 (1) of Act 29. The facts of the case read to the Accused person. The plea of guilty has been recorded as exactly stated by the accused as mentioned in sect 199 (1) of Act 30 which states that “where the accused pleads guilty to a charge, the court before accepting the plea shall, if the accused is not represented by counsel, explain to the accused the nature of the charge and the procedure which follows the acceptance of a plea of guilty”. Page 1 of 5 The implications of the accused pleading guilty to the court has been explained to the accused. He has therefore pleaded for mitigation which will be considered in determining the level of punishment in consonant with the law. The Law The requirement of the law per Article 19 (2) (c) of the 1992 Constitution is that a person charged with a criminal offence is presumed innocent until he is proved guilty or he pleads guilty. The article reads:

- (2) “A person charged with a criminal offence shall –
- (c) be presumed to be innocent until he is proved or has pleaded guilty” The burden of proof in a criminal action therefore totally rests on the prosecution. Section 11 (2) of the Evidence Act, 1975 NRCD 323 provides that, for the prosecution to succeed in discharging that burden of proof, it must produce evidence as to facts that are essential to the guilt of the accused person in such a manner that the totality of the evidence would tell a reasonable mind that those facts exist beyond reasonable doubt. Per the case before this court, the accused has

pleaded guilty simpliciter and therefore it is an admission that he did indeed committed the said charged offence. The charge of stealing Stealing is defined by section 125 of the Criminal Offences Act, 1960 Act 29 as follows: "A person steals who dishonestly appropriates a thing of which that person is not the owner." The essential ingredients of the crime of stealing which the prosecution ought to prove beyond reasonable doubt therefore are: The subject matter which is 24mm of 4*35mm copper cable valued at ₦13,512.00 the property of Doummar Electrical Company. Page 2 of 5 There is no dispute about the fact that the item was not for the accused. The Oxford Advanced Learner's Dictionary defines appropriation as "the act of taking something which belongs to somebody else, especially without permission". Section 122 (2) of the Criminal Offences Act 1960, Act 29 explains what constitutes an act of appropriation. Acts which amount to an appropriation

- (2) An appropriation of a thing in any other case means any moving, taking, obtaining, carrying away, or dealing with a thing, with the intent that 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 prosecution's task therefore is to adduce evidence beyond reasonable doubt that the accused herein appropriated the items in question, however the plea of guilty simpliciter by the accused discharges prosecution from adducing his evidence to prove the guilt or otherwise of the accused. From the above, it is trite learning that under Article 19(2) (c) of the 1992 Constitution, everyone charged with a criminal offence is presumed to be innocent until the contrary is proved. In the circumstance there is an admission on the part of the accused that he indeed committed the offence and this is evidenced in his voluntary plea of guilt simpliciter. For the accused to plead guilty simpliciter before this Court, the court has considered the gesture as good faith, however once the guilt of an accused person has been established in a criminal trial, using the accepted standard and/or burden of proof, the issue of punishment must be considered using different criteria. That is because, in imposing sentence on a convicted person, the courts normally take into consideration factors such as whether the sentence is of a deterrent, reformatory or retributive Page 3 of 5 nature. Sometimes the criminal and previous antecedents of the accused are taken into consideration. (see *Gligah & Atiso vrs. The Republic* [2010] SCGLR 870. The law is that in determining the appropriate sentence to impose, the Court must take into consideration the seriousness of the offence, how the citizens consider that type of offence, the manner in which the crime was committed and whether the crime is on the ascendency in the area. The court is also bound to consider the mitigating and aggregating circumstances of the offence. In the case of *Kamil vrs The Republic*

- [2011] 1 SCGLR 300, the Supreme Court provided guidelines for both trial and appellate courts on matters that should be taken into consideration before an appropriate sentence could be imposed. I have therefore considered the facts of the instant case and the term of imprisonment as stated by the law in section 296(5) of the criminal and other offences Act (procedure) Act 1960 Act 30. This provision is to the effect that an offence under section 124 of Act 29 is liable to a term of imprisonment not exceeding twenty five (25) years. The

accused pleaded has guilty simplicita without wasting the court's time and is a first time offender. Prosecution also informs the court that the accused has reimbursed the complainant the item stolen. Nevertheless there are other potential offenders who are also expected to learn from the decision of this court and desist from embarking on the same if not similar trajectory. From the above account of the facts and the law, accused is thereby convicted per the charge and sentenced to a term of two (2) years imprisonment. The sentence is to take effect from the day of his arrest under Article 14(6) of the 1992 constitution. SGD H/H JONATHAN ODARTEY CIRCUIT COURT JUDGE Page 4 of 5 KUMAWU-ASHANTI 30/05/2024 Page 5 of 5

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