

GHANA / JUDGMENT

Republic Vrs Nyarko and Others

[2023] GHADC 401 (15 February 2023)

COURT
ghadcDECIDED
15 February 2023

Source: ghalii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE DISTRICT COURT HELD AT DAWURAMPONG ON WEDNESDAY 15TH DAY OF FEBRUARY 2023, BEFORE HER WORSHIP AWO AMISSAH FRENCH ESQ. AS MAGISTRATE. SUIT NO: C7/29/22 THE REPUBLIC VRS. KOFI NYARKO ALIAS SANKARA

1. AKUA BENEWAA - COURT FINE PAID
2. PHILOMINA SAKYI – DEALT WITH A1 PRESENT INVESTIGATOR PRESENT SERGEANT EMMANUEL AKONNOR FOR PROSECUTION NO LEGAL REPRESENTATION FOR A1 J U D G E M E N T Before commencing with this judgment, I'll quickly comment that per the charge sheet filed in this Court, four charges were preferred against all three accused persons which are stealing, causing unlawful damage, dishonestly receiving and dishonestly receiving repeatedly, contrary to sections 124(1), 172, and 146 of the Criminal Offences Act, 1960 (Act 29). A1 was singularly charged with the offences of stealing and causing unlawful damage, while A2 and A3 were charged with the offence of dishonestly receiving respectively. A2 and A3 have both been dealt with. In view of the fact that trial had already commenced since A1 pleaded not guilty to the Two Counts of stealing and causing unlawful damage, having only taken over the Court on transfer, his was taken de novo. The brief facts that gave rise to the charges as initially presented to the Court were that the complainant, Esther Gyasi is a hair dresser and runs her hair dressing salon at Gomoa Eshiem. Kofi Nyarko A1 is unemployed and lives with A2, Akua Benewa, trader and A3 Philomina Sakyi, hairdresser in Lower Bobikuma. On the 20th of February, 2022 the complainant visited her salon shop and found out that thieves had broken the window valued at Two Hundred Ghana Cedis (GH¢ 200.00), entered into the shop and made away with One Hundred and Eighty Five (185) pieces of assorted human hair valued at Three Thousand Six Hundred and Forty Ghana Cedis (GH¢3,640.00) and seven assorted hair creams valued at Nine Hundred and Seven Eight Ghana Cedis (GH¢978.00), totalling Four Thousand, Six Hundred and Eighteen Ghana Cedis (GH¢4,618.00). Complainant lodged a complaint with Gomoa Eshiem Police for investigation, upon which A3 was arrested upon intelligence that A3 was selling some of the stolen products at Lower Bobikuma, leading to the retrieval of sixteen (16) assorted pieces of human hair. During investigation, A3 admitted having bought the items from A2 at a cost of Four Hundred and Fifty Ghana Cedis (GH¢450.00). A3 then led Police to arrest A2 who

mentioned that about a month earlier A1 brought her sixty-one (61) pieces of assorted human hair with six (6) assorted hair creams which she bought at a total cost of Five Hundred Ghana Cedis (GH¢500). A1 was subsequently arrested. On the 3rd day of October 2022 when A1 was arraigned before this Court for his plea to be taken de novo, he pleaded NOT GUILTY to all two Counts of stealing and causing unlawful damage, charges having been explained to him in the Fante language. The Court then proceeded to try the case de novo. Before I proceed, I wish to touch on the reliance of A1 on alibi, which was put up by him as a defence. This came up at the close of prosecution's case when A1 was called upon to open his defence. A1 indicated that on the said date, it was during the rainy season and so he had gone snail hunting and was looking for a buyer for his snails. He subsequently met a friend who indicated having secured a prospective buyer for One Thousand Five Hundred (GH¢1,500) worth of coconut fruit, and so they went to the said prospective buyer to collect the said amount. A1 indicated that he went with the said friend to a suburb of Gomoa Abodom by name Anarfo where they secured part payment of Two Hundred Ghana Cedis (GH¢200.00) in return for supply of Five Hundred (500) pieces of coconut fruits. A1 further added that on his way with the said friend to pluck the coconut, they were arrested by the Police and sent to the Bobikuma Police Station. Now section 131 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) provides as follows: "131. Alibi

- (1) Where an accused intends to put forward as a defence a plea of alibi, the accused shall give notice of the alibi, to the prosecutor or counsel with particulars as to the time and place and of the witnesses by whom it is proposed to prove, (a) prior, in the case of a summary trial, to the examination of the first witness for the prosecution, and
- (b) prior, in the case of trial on indictment, to the sitting of the trial Court on the date to which the case of trial has been committed for trial.
- (2) Where the notice is given the Court may, on the application of the prosecution, grant a reasonable adjournment.
- (3) Where the accused puts forward a defence of alibi without having given notice, the Court shall call on the accused to give notice to the prosecution of the particulars mentioned in subsection (1) forthwith or within the time allowed by the Court and after the notice has been given shall, if the prosecution so desires, adjourn the case.
- (4) Where the accused refuses to furnish the particulars as required the case shall proceed but evidence in support of a plea of alibi is not admissible in evidence." The Court, pursuant to section 131 (3) of Act 30, immediately quoted above, called on the accused person to give notice to the prosecution and the case was subsequently adjourned to a later date. A1 gave prosecution the needed particulars to facilitate investigation into the matter including the name of A1's witnesses by whom he sought to plead his defence of alibi. However, prosecution returned to the Court to indicate that all attempts at reaching the witnesses by which A1 sought to prove his defence of alibi had failed. The defence of a plea of alibi therefore could not be substantiated and therefore broke down. The case then proceeded

with A1 calling one witness by name Kofi Abbam (DW1) who is a taxi driver and also lives at Agona Bobikuma. DW 1 testified that he had gone snail hunting with a friend and that they met A1 also snail hunting. DW1 indicated they were unsuccessful while A1 got lots of snails and hence left DW1 with his friend. DW1 further indicated that at about 5am the next day, he returned home only to hear a rumour that A1 had stolen plantain and was arrested by police. DW1, upon a clarification question posed by the Bench, could not recall the exact period of his evidence but indicated it was somewhere around 2021, about a month to the Akwambo Festival. Having dealt with the defence of the plea of alibi as put across by A1, I'll proceed to evaluate prosecution's case to determine whether the various offences of stealing and unlawful damage have been proven beyond reasonable doubt. Section 11 (2) of the Evidence Act, 1973 (NRCD 323) states that 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. Subsection 3 of the same provision says that in a criminal action the burden of producing evidence, when it is on the accused as to any fact the converse of which is essential to guilt, requires the accused to produce sufficient evidence so that on all the evidence a reasonable mind could have a reasonable doubt as to guilt. Further, Republic v. District Magistrate Grade II, Osu; Ex parte Yahaya [1984-86] 2 GLR 361 – 365, where Brobbey J. (as he then was) stated; "One of the cardinal principles of criminal law in this country is that when an accused person pleads not guilty, his conviction must be based on evidence proved beyond reasonable doubt." I shall first consider Count 1 where the accused person is charged with stealing under Section 124(1) of Act 29 which states; "A person who steals commits a second-degree felony." Also, Section 125 of Act 29 defines stealing thus; "A person steals who dishonestly appropriates a thing of which that person is not the owner." As held in MENSAH AND OTHERS v. THE REPUBLIC [1978] GLR 404-427, in order to ground a conviction on this charge, the Prosecution must establish beyond reasonable doubt that;

- a. The person charged must not be the owner of the thing allegedly stolen,
- b. The person so charged must have appropriated the thing,
- c. The appropriation must have been dishonest. Section 122(6) of Act 29 defines appropriation thus; "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." PW1 by name Esther Gyasi testified that on the 19th January, 2022, her attention was drawn to a break-in at her salon with various assorted human hair pieces valued at Three Thousand, Six Hundred and Forty Ghana Cedis (GH¢3,640.00) and hair creams valued at Nine Hundred and Seventy -Eight Ghana Cedis (GH¢978.00) were all missing. She indicated that having lodged a complaint with the Police, she had tip off during the early days of March 2022 from Agona Bobikuma that there is a woman hawking ladies hair and cream. PW1 indicates that she went to Agona Bobikuma

herself and decided to conduct a random enquiry by visiting one salon after another, which led her to A3's shop. Upon enquiring about the prices of the hair pieces on display, she observed that A3 was inconsistent in her price quotations. Her further enquiries revealed that A3 had obtained the hair pieces from A2, who upon her arrest also mentioned A1. PW2, No. 56742 General Constable Boakye Kingsley under cross examination corroborated this evidence by indicating that his investigation revealed that A1 was the person who brought the items to Akua Benewaa, A1. From a study of the record, A2 having pleaded guilty with explanation explained that she had bought the items from A1 at a cost of Five Hundred Ghana Cedis (GH¢500). A1 is not the owner of the hair pieces and assorted hair creams. By his act of taking the various items and selling same to A2, from the record, he dishonestly appropriated the items, thereby depriving the complainant the benefit to be deprived from their use or sale at her salon. The litmus test is hereby satisfied as these corroborative pieces of evidence are enough proof beyond reasonable doubt that A1 did indeed steal the said human hair pieces and hair creams and sold them for a pittance. I hereby find A1 guilty of commission of the offence of stealing. With respect to Count Two under which A1 is charged with causing unlawful damage to a window of the salon shop valued at Two Hundred Ghana Cedis (GH¢200.00) contrary to section 172 of Act 29. Section 172 is reproduced thus "CHAPTER 3—UNLAWFUL DAMAGE Section 172—Causing Unlawful Damage.

- (1) Whoever intentionally and unlawfully causes damage to any property by any means whatsoever—
 - (a) to a value not exceeding ₵1 million, or to no pecuniary value, shall be guilty of a misdemeanour;
 - (b) to a value exceeding ₵1 million, shall be guilty of second- degree felony.
- (2) Whoever intentionally and unlawfully causes damage to any property in such a manner as to cause or to be likely to cause danger to life shall be guilty of first- degree felony.
- (3) In this section property means movable and immovable property of every description." Further provision which throws more light on the offence of causing unlawful damage is as follows: "Section 173—Definition of Damage. "Damage" includes not only damage to the matter of a thing, but also any interruption of the use thereof, or any interference therewith, by which the thing becomes permanently or temporarily useless, or by which expense is rendered necessary in order to render the thing fit for the purposes for which it was used or maintained." PW1 testified that it was her son who discovered that her salon had been broken into through a damaged window. Having found A1 guilty of the offence of stealing, it is only reasonable of me to cast my eyes on A1's mode of access to the salon. In so doing, I'll tie the act of stealing with the damage to the window, hence A1's access to the salon A1 is also found guilty of the offence of causing unlawful damage. Indeed "the thief cometh not, but for to steal, kill and to destroy" (John 10:10a). Having found A1 guilty of both charges of stealing and causing unlawful damage contrary to sections 124(1) and 172 of Act 29, A1 is convicted on both charges and is sentenced as follows: (i) Count One: A1 is sentenced to pay

to the Republic a fine of 200 penalty units or in default to serve a term of imprisonment of 1year IHL; (ii) Count Two: A1 is sentenced to pay to the Republic a fine of 50 penalty units or in default to serve a term of imprisonment of 2months IHL. (iii) A1 is further ordered to pay to the complainant an amount of Four Thousand, Eight - Hundred and Eighteen - Ghana Cedis (GH¢4,818.00) in restitution. (iv) Sentence has been reached taking into consideration the fact that A1 is not known to the law albeit the need to serve as a deterrent, noting A1 has spent some days in Police custody which stand to his credit. SGD H/W: AWO AMISSAH
FRENCH DISTRICT MAGISTRATE, NKROFUL 15TH FEBRUARY, 2022

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ghalii.org/akn/gh/judgment/ghadc/2023/401/eng@2023-02-15/source.pdf>

CASE PAGE <https://chat.esheria.ai/case-law/ghana/stealing-ghadc-2023--6a3ea5233b1caa9129818ee7>

Prepared on 29 October 2026 · Esheria