

IN THE CIRCUIT COURT '10' OF GHANA, ACCRA, HELD THIS
THURSDAY THE 1ST DAY OF DECEMBER, 2022 BEFORE HER HONOUR
EVELYN E. ASAMOAH (MRS.)

SUIT _____ NO.
D2/191/2021

THE REPUBLIC

V.

1. KOFI ADU @ OTEGAH

2. ERNEST OBENG @ KWEKU

CHIEF INSPR. BENSON BENNEH FOR THE REPUBLIC

JUDGMENT

- The accused persons have been charged with the following offences:
 - Conspiracy to commit crime to wit stealing contrary to sections 23(1) and 124(1) of the Criminal and other offences Act 1960-Act 29(A1&A2)
 - Stealing contrary to section 124(1) of Act 29(A1&A2)
 - Fraudulent breach of trust contrary to section 128 of Act 29 (A1)

- They pleaded not guilty to all the charges. The facts presented by the prosecution are as follows: The first accused (A1) is a mechanic and the second accused (A2) is a driver. Both accused persons reside at the fan-milk junction. In November 2019, the complainant wanted to sell his Mercedes Benz sprinter bus with registration number GC 71778-11 and needed someone to assist. He discussed it with a friend, Cassandra Ama Brobbey, a witness in this case.

Consequently, on 21st October 2019, Cassandra sent the first accused to the house of the complainant to assist the complainant sell his vehicle. The first accused inspected the vehicle and requested to take it to his mechanic shop at Sowutuom for display to attract buyers and same was granted by the complainant. However, three days after, the first accused called the complainant and advised him not to sell the vehicle but rather repair it for use since the fault detected was not a major one. The first accused requested an amount of GHC 1000 from the complainant to fix the fault but the complainant who at the time had no money asked the first accused to bring the vehicle back to him with the assurance that any time he gets the money he would call the first accused to come for the vehicle to fix the fault. On 24th October 2019, the first accused (A) accompanied by Cassandra sent the vehicle to the complainant in his house.

However, on 9th November 2019, A1 went to the house of the complainant without Cassandra and took the vehicle and in addition collected GHC 800 from the complainant to repair the vehicle. Three days after, the complainant called A1 to check on the state of affairs but A1 said he had detected another fault which will cost the complainant GHC 1500 to fix without which the vehicle could not even move. The complainant became suspicious and asked his son, a witness in this case, to go to Sowutuom and check on the car. His son went to Sowutuom but did not see the car or A1. A1 went into hiding and failed to answer the calls of A1.

On 22nd January 2020, a complaint was made at the Nungua Police station. While the investigation was ongoing, the complainant was able to trace the parents of A1 and reported the case to them. A few weeks thereafter, A1 for the first time in two years called the complainant on his phone and stated that

during the same period that he took the car from the complainant, A2 drove it out in his absence and he has since not set his eyes on the car. A1 further told the complainant that he had reported the case at the Anyaa police station to enable them to sort things out. At the police station. A1 was arrested and A2 who was then in the custody of the Anyaa Police station was released for further investigation at the Nugua Police station. the accused persons could not tell the whereabouts of the car except to say the car is missing. After investigations, the accused persons were charged and put before this court.

● In the case of **Francis Yirenyi V. The Republic Criminal Appeal No. J3/ 7/ 2015 17th February 2016** Justice Dotse JSC stated:

“In his book, entitled “The Supremes Greatest Hits – The 34 Supreme Court Cases That Most Directly Affect Your Life” Michael G. Trachtman, commenced chapter 4 of the book on page 58 with the following quotation which we think is very relevant to the circumstances of this case that we would want to adapt and use. It states as follows: - “The one place where a man ought to get a square deal is in a courtroom, be he any colour of the rainbow...” Atticus Finch...”

In the case of **Mantey and Another V. The State [1965] GLR 229-234** Archer J (as he then was) stated:

“In my view, the animus furandi must be proved by the prosecution. Moreover section 125 of the Criminal Code, 1960,5 states that “A person steals if he dishonestly appropriates a thing of which he is not the owner.”

Then section 120 (2) of the same Act also provides that:

“It is not necessary, in order to constitute a dishonest appropriation of a thing, that the accused person should know who is the owner of the thing, but it suffices if he has reason to know or believe that some other person,

whether certain or uncertain, is interested therein or entitled thereto, whether as owner in his own right, or by operation of law, or in any other manner . . .”

- The complainant in his witness statement and the other prosecution witnesses repeated most of the facts provided by the prosecution in the brief fact. The complainant pointed out that he took a loan of GHC1000 and gave A1 GHC 800 to repair the car. Three days later, A1 called and said he had detected another fault that will cost GHC 300 to fix. He became alarmed and asked him to park the car at a safe place as he tries to raise the additional money. He was unable to raise the money so he instructed A1 to bring the vehicle to him but A1 said he had worked on the car but could not move it to his place. Three days later, he sent his son to A1’s workshop but the car was not there.

A1 called him on phone and indicated that the was not around and that the car had been packed in a house but without him, his son will not be allowed into the house. Two weeks later, he called A1 but A1 stated that he was at Obuasi. Since that time, A1 failed to answer all his phone calls and he could not trace his whereabouts so he reported the matter to the police. According to the Police investigator, after the complaint, a signal was immediately sent to Nkawkaw police station and its environs to look out for A1, arrest, and detain him. The Police had information that he was living around Nkawkaw with the bus.

The accused persons were called upon by the court to open their defence after the prosecution had closed its case.

- **The First Accused (A1)**

According to A1, he took the vehicle to his shop to work on it and that he drives it by a spot where A2 normally sat. He was at his shop when A2 came that he wanted to drive the vehicle. One morning, A2 came around and he gave the car keys to A2 to wash the car. About two hours, he returned from Abossey Okai but did not see the car and A2. A2 refused to answer his calls. That A2 never returned the car. He pointed out that for fear of being arrested and kept in detention, he did not report the matter to the complainant. He decided to rather report to the Police to help him search for A2 and the vehicle before informing the complainant. On 21st June 2021, he had information that A2 was sitting at the Gbawe cemetery so he proceeded there and caused his arrest. He informed the complainant about that incident. These facts were repeated in his caution statement- *Exhibit A*.

- **The Second Accused (A2)**

A2 did not file his witness statement, though he was given several opportunities to do so. His evidence was taken orally. He stated:

“I do not know the complainant. It’s not true that I stole the vehicle. I know A1 from Ablekuma. A1 gave me a car but there it was faulty. We took it to a mechanic shop but we were unable to complete the work. The following day, I went out with the car but it broke down. I went to A1’s house to inform him but he was not present. In the evening, I went to A1 and informed him that the car had broken down. He told me not to worry and that he knows what he will do about it. After that, I left everything to him and I left. He, later on, came to my house, accompanied by some policemen to arrest me for stealing a car. I was taken to Anyaa Market police station. I was at the Anyaa Market police station where I was informed that the matter had been reported at Nugua police station – by

A1 and some policemen. At the time he gave the car to me, he said the car belongs to his sister. He did not introduce me to anyone when he gave the car to me. He handed it to me himself. When the car broke down, I informed A1 about it. I know nothing about the stolen car. That is all."

- This evidence is contrary to what he stated in his caution statement- Exhibit B. According to A2, the car was faulty so he parked it on Graphic Road and did not find it there the following day. He stated:

"... The car was faulty so we took it to the mechanic shop to be worked on. It was Thursday. The following day I started work. Just after, one trip of work the (car) spinster car with registration number GC 7178-11 got spoiled again. So, I parked it on Graphic Road Accra at about 7:00-8:00 am thereabout. I (did) call my father at Abossey Okai who sells car parts to come and ascertain the fault for me but he did not come. The following day which was Saturday I went to Graphic Road where I parked the car and to my surprise, the car was not found. I did not report it to the police for no reason... "

In the case of Obeng Vrs. Bempomaa (1992-93) GBR 1027, the Court held:

"Inconsistencies ... may cumulatively discredit the claim of the proponent of the evidence. The conflicts in the evidence ... weakened the merit of his case and proved fatal to his claim".

- The evidence points out that A2 took the vehicle from the mechanic shop without A1's or the complainant's consent. The facts show that he went into hiding after the incident till he was arrested around the Gbawe cemetery by A1.

He failed to lead any evidence to establish that the car was faulty, it was parked on Graphic Road and was nowhere to be found the following day. A1 did not call any witnesses. He failed to report the alleged incident to the Police, A1, and the complainant and went into hiding. The court finds that he dishonestly appropriated the complainant's vehicle.

In the case of **Brobey and others V. the Republic (1982-83) GLR 608**, the Court held:

“By the provision of Act 29, s. 125, the essential elements of the offence of stealing were that; (i) the person charged must have appropriated the thing allegedly stolen, (ii) the appropriation must be dishonest, and (iii) the person charged must not be the owner of the thing allegedly stolen. Consequently, a person could not be guilty of stealing unless he was proved to have appropriated the thing in the first place...”

In the case of **Anang V. the Republic (1984-86) 1GLR page 458**, the Court held:

“Dishonesty in the definition of stealing connoted moral obloquy. To sustain a conviction for stealing there had to be an act of the accused of such a nature as to cast a slur on the character revealing him as a person lacking in integrity or as a plainly dishonest person—to use the language of the Criminal Code, 1960 (Act 29), s. 125.”

- The complainant gave his vehicle to A1 to repair. A1 took the car to his mechanic shop. However, A2 drove the car away in the absence and without the consent of A1 and later went into hiding. A1 arrested A2 and took him to the Police station. A2 unlawfully took the car and failed to give same to the rightful owner. There is no evidence on record that A1 conspired with A2 to steal the car.

They are acquitted of the offence of conspiracy to wit stealing-count 1. A1 is acquitted of all the offences leveled against him. A2 is hereby convicted of the offence of stealing. Taking into account A2's plea of mitigation, he is hereby sentenced to three (3) years imprisonment in hard labour. He is ordered to return/give the car to the complainant.

(SGD)

H/H EVELYN E. ASAMOAH (MRS)

CIRCUIT COURT JUDGE