

IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON MONDAY THE 24TH
DAY OF OCTOBER, 2022 BEFORE HER HONOUR ROSEMARY BAAH TOSU
(MRS) – CIRCUIT COURT JUDGE

COURT CASE NO: D4/117/2022

THE REPUBLIC

VS

ISAAC KOOMSON @ GOOD LIVING

RULING

Accused is charged with one count of Stealing contrary to section 124 (1) of the Criminal Offences Act 1960 (Act 29). He pleads not guilty.

According to Prosecution on the 18th January, 2022 at about 10:30 pm, the complainant parked his Nissan bus with registration number GN 3055-09 valued at GHS40,00 and went to attend to nature's call. Upon his return, complainant noticed that the vehicle was nowhere to be found. On the 7th of April, 2022, accused was arrested through an informant.

Prosecution says that Accused in his caution statement admitted the offence and told Police that he had three other accomplices. Prosecution alleges that Accused confessed that he and his accomplices took the said bus to Agbogbloshie and sold it as scrap at a price of GHS2000.

Prosecution relied on the evidence of three persons. PW1 is Joshua Quarshie, the owner of the vehicle. His evidence is that he gave the vehicle to the complainant, one Okoe Adjetey, PW2, to drive and render sales. PW2 later informed him that the vehicle had been stolen. PW1 testified that he had been searching for the car since January, 2022, however it was in April that he was informed about the arrest of Accused in connection with the theft. He tendered the car documents in evidence as exhibit A.

PW2 is the driver of the vehicle in question. His evidence is that on the 17th January, 2022 at around 10: 30 pm after work, he parked the vehicle at Teshie Adoemi bus stop to attend to nature's call. Upon his return, he could not find the car at the spot he parked it. He testified that he combed the whole area but could not find it. He was also surprised since he still had the ignition key with him. He was informed that

someone noticed four boys pushing the car away. He reported the incident to the Police.

PW3, is the investigator charged with the conduct of this matter, Detective Sergeant Naatu Danyi. He testified that whilst on duty, this case was referred to him for investigation. He testified that on the 7th April, 2022, Accused was arrested through an informant. According to PW3 Accused admitted to the offence in his caution statement. PW3 says per his investigations, Accused and his accomplices sold the vehicle as scrap for the amount of GHS2000.

A mini trial was conducted to determine the admissibility of the investigative cautioned statement and the charge statement, which were confession statements. These documents were ruled inadmissible for having being taken in breach of statute that is the Evidence Act, NRCD 323.

THE CHARGE AGAINST ACCUSED

Section 125 of Act 29 provides

'A person steals who dishonestly appropriates a thing of which he is not the owner'.

The elements of this offence can therefore be distilled as follows

- a. Dishonesty
- b. Appropriation
- c. Property belonging to another person

ANALYSIS OF THE EVIDENCE LED AND THE LAW

Section 11(2) provides the burden on the Prosecution, it says

'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.'

The burden then on Prosecution is to prove the guilt of an Accused person beyond reasonable doubt, however, after the close of Prosecution's case, their evidence is supposed to have made out a prima facie case before an Accused would be called upon to open their defence.

For there to be the offence of stealing, there has to be what is called an appropriation. And the appropriation in this particular circumstance must be of the missing car, the Nissan bus with registration number GN 3055-09.

Section 122(2) of Act 29 defines appropriation

'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 the benefit of the right or interest in the thing, or in its value or proceeds, or part of that thing.'

The evidence of PW1 and PW2 clearly shows that not only do they not know the Accused person physically, but they never saw him appropriate the said vehicle. Their evidence is based on what they were told by Prosecution.

Prosecution, apart from the alleged confession statement, which was thrown out did not have any other evidence to show that Accused person appropriated the vehicle. Prosecution relied on information from an informant, who they could not call as a witness.

I therefore find that prosecution witnesses have been unable to show that Accused is the one who carried away, moved, obtained or dealt with the Nissan vehicle in question. This element is not proven.

The next element is that the appropriation of the vehicle must have been dishonest. Since no evidence has been led to show that it was Accused who appropriated the vehicle, it follows that Accused was also not dishonest.

The final element of the offence of Stealing is that the property in question must not belong to the Accused. There is no contest that the vehicle does not belong to Accused, at least as per exhibit A. That element is proved by prosecution.

The case of *Moshie vs The Republic (1977) 1GLR 287* held

'The law now seems to be that in considering his duty under section 271 of the Criminal Procedure Code, 1960 (Act 30), the judge should not leave a case to the jury if he is of the opinion that

- a. There has been no evidence to prove an essential element in the crime charged, or*
- b. The evidence adduced by the Prosecution had been so discredited as a result of cross-examination or*

- c. The evidence is so manifestly unreliable that no reasonable tribunal could safely convict upon it, or*
- d. The evidence is evenly balanced, that is to say, the evidence was susceptible to two likely explanations, one consistent with guilt, one consistent with innocence*

At the close of the Prosecution's case I find that Prosecution has failed to lead sufficient evidence to make out a prima facie case against Accused. I am therefore unable to call upon Accused to open his defence. He is acquitted of the charge of Stealing.

(SGD)
H/H ROSEMARY BAAH TOSU (MRS)
CIRCUIT COURT JUDGE