

IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON TUESDAY THE  
11<sup>TH</sup> DAY OF APRIL, 2023 BEFORE HER LADYSHIP ROSEMARY BAAH TOSU

(MRS) – HIGH  
COURT JUDGE SITTING AS AN ADDITIONAL  
CIRCUIT COURT JUDGE

COURT CASE NO: D4/ 37/19

THE REPUBLIC

VS

HAMMOND LOVE

RULING ON SUBMISSION OF NO CASE TO ANSWER FILED ON BEHALF OF  
ACCUSED

Section 11(2) of the Evidence Act 1975 NRCD 323 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.

In the case of *Republic vs. Kwabena Amaning @ Tagor & Anor Suit no. ACR 4/2007*, the Court of Appeal stated on prima facie evidence that

*'It is a notorious principle in the criminal law that 'prima facie evidence' is nothing other than evidence that can lead to the conviction of the Accused if the Accused leads no evidence to rebut the presumption raised in it.'*

Torkonoo JA (as she then was) in the case of *Aaron Kwasi Kaitoo vs Republic*, case number H2/25/2017, unreported concluded that

*'The duty of the Court at the end of prosecution's case is to determine and act on the import of the evidence not its positive weight. The relevant question is-is the evidence preferred by the prosecution insufficient to ground the finding of the offence? Or is it of such quality that the Court finds the essential elements of the offence as presented?*

*The court has to be satisfied that the evidence presented is of such a quality that inter alia, the essential elements of the offence are not missing from the evidence".*

Prosecution has charged Accused with the offence of Stealing contrary to section 124(1) of the Criminal Offences Act, 1960, Act 29.

Accused has pleaded not guilty.

### **THE PROSECUTION'S CASE**

According to the facts presented by Prosecution, Samuel Amankwa, the complainant is a businessman who resides in the United States of America. Accused is a pastor resident in Accra. In the year 2016, Complainant shipped a Toyota Highlander 2013 model with chassis number 5TDBK3EH3DS181410 into the country and requested Accused to clear it for him.

Accused used his resources to clear the vehicle. After clearing this vehicle, Complainant told him to sell the vehicle at USD 50,000 and deduct his duty money.

Complainant later informed Accused not to sell the vehicle because he would arrive in Ghana in April 2017 and would pay off the money. Complainant upon his arrival got in touch with Accused, however, Accused could not produce the vehicle despite persistent demands.

Accused was then charged.

First Prosecution witness is Samuel Amankwa. He testified that in the year 2016, he shipped his Toyota Highlander 4x4 from Canada to Ghana. He says that Accused who is his childhood friend offered to clear the vehicle for him.

PW1 says that he spoke to one Rose, a clearing agent, who informed him that it would cost GHS 27,000 to clear the car. Accused on the other hand informed him that the clearing fee was GHS47,000. PW1 says he did not have the money ready so Accused added an amount of GHS38,500 to top up an amount of GHS8500 which was paid to Accused through PW1's sister, Margaret.

PW1 says he returned to Ghana in April 2017 and requested for the vehicle, however, Accused refused to produce the vehicle until PW1 paid him an amount of GHS50,000. Upon insisting, Accused asked him to meet one Kofi Kafefe who he claimed to have borrowed money from, but the said Kofi denied the story.

Accused subsequently refused to produce the car and upon arrest informed the Police that he had sold the car.

Prosecution's next witness is one Antwi Boasiako. He testified that on the 1<sup>st</sup> of December, 2016, PW1 informed him that he had shipped the vehicle and directed him to go to Sunyani to retrieve the documentation on the vehicle and give it to one Rose, an agent at Tema.

In January, 2017, PW2 says he received a call from Accused that PW1's sister was in his house and he Accused had discussed the vehicle with PW1. PW2 says he informed Accused that he was organizing some money to clear the car but Accused told him not to worry because he was in Accra and would raise money to clear the car from the port.

PW2 says he paid an amount of GHS8000 through PW1's sister, Margaret Amankwa's account to Accused to top up the money for clearing the vehicle. Accused acknowledged receipt of this amount.

Sometime in March, 2017, Accused informed PW2 that he had cleared the vehicle and PW1 had directed him to sell the vehicle for GHS140,000. Accused then informed PW2 that he had spent GHS46,000 to clear the car and he had to take a loan with interest.

PW2 says he was angry with this revelation and asked Accused to inform PW1 of the issue. Upon the arrival of PW1 in April, 2017, the parties met with Accused, however, despite PW1 informing Accused that he was prepared to pay for the expenses on the car, Accused refused to send them to where the vehicle was.

PW3 is Joseph Nana Ofori, he testified that in the latter part of 2016, PW1, who is his cousin, sipped a Toyota Highlander SUV to Accused to clear for him from the harbor in Ghana.

According to him, he understood the arrangement to be that Accused was to use his personal funds to clear the vehicle and sell the vehicle after three months if PW1 failed to come to Ghana.

PW3 says that PW1 came to Ghana within the three month period, PW1 called Accused in his presence for parties to meet so that he, PW1 can pay off the expenses and accused would release the car to them.

Accused however, informed them that the vehicle was with a car dealer and he would only release the vehicle after an amount of GHS50,000 was released to him.

On 24/4/ 17, PW1 managed to get GHS50,000 for Accused but Accused now insisted that he had to work out some interest on this amount and this led to disagreements and anger among the parties.

Finally, they rescheduled the meeting however, despite several calls and searches, they could not find Accused until the Police arrested him.

PW4 is Detective/ Sergeant Joseph Owusu. He testified that a case of Stealing involving Accused was referred to him for investigation. PW4 says he obtained statements from all the parties.

According to PW4 upon his arrest, Accused stated that he secured a loan of GHS40,000 from Loyed Microfinance Company with interest in order to clear the vehicle from the port. Accused said because the loan was accruing interest, he sold the vehicle to offset the debt.

Further investigation revealed that in April, 2017, PW1 arrived in Ghana and requested the Accused to hand over the car. Accused demanded that PW1 pays an amount of GHS56,000 being the loan used in clearing the car and interest as well as GHS2000 shipment fee. PW1 requested to see the car before payment but Accused did not oblige.

PW4 testified that further checks at the Customs Division of the Ghana Revenue Authority show that an amount of GHS39, 452.12 was paid as duty. Police could also not locate the said Loyed Microfinance Company when they physically went to check for it. Accused was therefore charged with the offence of stealing.

PW4 tendered the following in evidence

- Letter to Registrar General's Department - Exhibit A
- Response from Registrar General- Exhibit B
- Letter to Loyed Micro Finance- Exhibit C
- Agreement Letter- Exhibit D
- Letter to Ghana Revenue Authority- Exhibit E
- Response from Ghana Revenue Authority- Exhibit F
- Bill of Laden details - Exhibit G series
- Power of Attorney from Complainant to PW2, Antwi Bosiako- Exhibit H

- Details of stamp duty paid on Power of Attorney- Exhibit H series
- Statement of PW4 -Exhibit J
- Statement of PW1- Exhibit K
- Statement of PW2- Exhibit L
- Statement of PW3- Exhibit M
- Cautioned Statement of Accused- Exhibit N
- Charge Statement of Accused- Exhibit P

## **THE CHARGE**

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

The first element Prosecution needs to prove is that there was an appropriation of the Toyota Highlander, the property PW1.

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.’*

It is really not in doubt that Accused took or obtained this vehicle. Accused has not denied this and I find that Prosecution has sufficiently proved this element.

Embedded in the definition of appropriation is the element of an attempt to deprive an owner of his due. Prosecution needs to prove that the act of taking the thing away was meant to deprive some person of the benefit of his right to/ or interest in the thing. The act of taking together with the intent constitutes the dishonest element of this offence.

The case of *Ampah vs Republic* (1977) 2GLR 171 held

*'...the crucial issue was whether the appropriation was dishonest which depended on the state of mind of the person doing the act amounting to appropriation. Whether an accused person had a particular state of mind was essentially a question of fact which had to be decided by the trial court.'*

Section 120 of Act 29 defines dishonest appropriation

*(1) An appropriation of a thing is dishonest*

*(a) If it is made with an intend to defraud or*

*(b) If it is made by a person without a claim of right, and with a knowledge or belief that the appropriation is without the consent of a person for whom that person is trustee or who is owner of the thing or that the appropriation would, if known to the other person, be without the consent of the other person.*

The question to ask is what was the mental state of the Accused when he cleared and eventually sold the said Toyota Highlander. What was his further mental state when despite requests from PW1 that he was ready to pay the expenditure on the vehicle Accused still refused to produce the vehicle.

Can we also say that Accused had a claim of right to the vehicle? The simple answer is no because, if Accused was entitled to anything then it was to the expenses he has incurred in clearing the vehicle. I also have no doubt that Accused person knew that his appropriation of this vehicle would be without the consent of PW1, the owner.

I find that Prosecution has proved sufficiently that Accused person's appropriation of the vehicle was dishonest.

The final element is that the property appropriated must not be the property of Accused. There is also no controversy that the Toyota Highlander is not the property of Accused. Prosecution has proved this element sufficiently, I find.

I find at the close of Prosecution's case that they have made out a prima facie case against Accused, I therefore call upon him to open his defence at the next sitting of this Court.

**H/L ROSEMARY BAAH TOSU (MRS)  
HIGH COURT JUDGE SITTING AS AN**

## ADDITIONAL CIRCUIT COURT JUDGE

### REPRESENTATION

Accused Absent

Chief Inspector Amoah Richard for Republic

Isaac Aidoo for Accused present