

IN THE CIRCUIT COURT, 28TH FEBRUARY ROAD, ACCRA SITTING ON MONDAY
THE 23RD DAY OF OCTOBER 2023 BEFORE HER HONOUR ELLEN OFEI-AYEH(MRS)
CIRCUIT COURT JUDGE

CASE NUMBER D4/32/2022

THE REPUBLIC

V

SETH ASANTE

JUDGMENT

Chief/Insp Moses Mensah Soagede

Nii Kwei Amassah Esq

JUDGMENT

1. The accused person has been charged with one count of stealing contrary to section 124(1) of Act 29. The particulars of offence are that *'for that you during the month of January 2020 the accused person did dishonestly appropriate cash, the sum of GHC28,000.00 belonging to Ofori Nyarko. The plea of the accused person was 'Not Guilty'.*
2. The facts presented by prosecution are that *the accused is a car dealer living at Gbawe. During the month of January 2020, the complainant told the accused that he wanted him to sell his unregistered Toyota Vitz car for GHC 28,000.00 and further sent the vehicle to the garage of the accused. Two weeks after the complainant had sent his car to the accused, he did not hear or see him after searches and enquiries were made. The complainant then reported the matter at the Police Station and the accused was arrested. Investigations were carried out and he was charged with the offence of stealing and arraigned before this court.*

3. In a criminal case, the prosecution bears the burden of proof to establish the guilt of the accused person beyond reasonable doubt by virtue of sections 11(2) and 13(1) of the Evidence Act, 1975 (NRCD 323). The accused person is under no obligation to mount a defence throughout the trial to prove his innocence until the court calls upon him/her to open the defence to raise reasonable doubt as regards his/her innocence. See Mallam Ali Yusif v The Republic (2003-2004) SCGLR 174 SC on the burden of persuasion and the evidential burden. Therefore, all the accused person need do is to raise reasonable doubt in his defence, and this is the standard of proof required in Criminal Trials. The Court is guided by the decision in Ali Yusif Issah (no 2) v The Republic, (supra) which relied on the decision in Miller v Minister of Pensions (1947) 1 All ER 372, where Lord Denning held that, *'proof beyond reasonable doubt doesn't mean proof beyond a shadow of doubt. The law would fail to protect the community if it admitted fanciful positions to deflect the course of justice. If the evidence is so strong to leave only a remote possibility, in his favour which can be dismissed with the phrase, 'it is possible' but not the least probable the case is proved beyond reasonable doubt. But nothing short of that shall suffice.'*
4. Prosecution called PW1, the complainant, Mr. Ofori Nyarko who testified per his witness statement that the accused sold the vehicle and kept the proceeds and without the car documents as they are in the complainant's possession. He tendered into evidence a declaration for customs document and vehicle documentation for six vehicles- Exhibit 'A' series. Complainant's statement is Exhibit B. he testified that the accused person told him aid he had sold the car on credit basis and the money would be ready in two weeks. When he went back in two weeks, the accused person did not give him the money. The accused person relocated from his residence and stopped coming to the garage. He later realised that the accused person was not even the owner of the garage as he claimed.

5. P.W.2 the investigator, D/Insp. Abubakr Jantu stated per his witness statement that on 2nd September, 2021, the matter was referred to him at the Regional Criminal Investigation Department, Accra for investigations. During the conduct of such investigations, he found out that the accused was to sell a car belonging to the complainant at his garage. Two weeks after the agreement between the parties, the complainant went to the garage of the accused to meet him for the proceeds of the vehicle or for the vehicle itself, however, the accused person was nowhere to be found and the car was also missing. The investigator tendered into evidence the following: cautioned statement of Seth Asante as Exhibit 'C', Charge statement of Seth Asante as Exhibit D.
6. The Accused in his defence testified by use of a Witness Statement and admitted to the fact that he was a car dealer and that somewhere in 2020 the complainant brought 10 Toyota Vitz vehicles for him to sell. Accused testified that although he owned no garage he made arrangements with a garage owner who enabled him display the cars. Accused said anytime he sold cars he met the complainant and gave him physical cash or at other times would withdraw the funds from his account to give to the complainant.
7. Upon the sale of the final car he was given a deposit of GHC 15,000.00 by the buyer. Upon informing the complainant to come for the money the complainant did not come with the reason that he would want the buyer to pay the outstanding fees before he can come for the money.
8. He testified that he suffered a motor accident shortly after, and due to the seriousness of the injury he left the deposit with two other persons namely Ken and Oga Patrick. Further attached as exhibits "1" are pictures of a car in the accident he was involved in. He tendered into evidence a Ministry of health receipt and a hospital card as Exhibits '2' and '2a' respectively. X ray photocopies are Exhibit 3.

9. Accused testified that he later discovered the garage had been closed and the two persons with whom he left the initial deposit with were nowhere to be found. Hence, he pleaded with the complainant to give him time to pay the sum but the complainant did not agree. As such, the accused firmly states he has not stolen or defrauded the complainant and as such his prayer was for the Honorable Court to acquit and discharge him.

10. Importantly, the essential ingredients of stealing as espoused in the case of Lucien v The Republic 1977 1 GLR 351-359 are;

That the accused is not the owner of the thing allegedly stolen

That the accused appropriated the thing alleged to have been stolen,

That the appropriation was dishonest

11. Section 123(3) of the Criminal Offences Act (Act 29) provides that all that is needed is for the prosecution to show that the accused is not the owner of the thing allegedly stolen. It is therefore not necessary for the prosecution to prove who actually owns the thing allegedly stolen. This was rightly upheld in the case of Republic v. Halm & Ayikumi (1969) CC 155 CA.

12. It is not in dispute that the unregistered Toyota Vitz vehicle in Exhibit 'A' does not belong to the accused person. Neither did he own the proceeds of the sale of the vehicle. It is also not in dispute that the vehicle has been sold as contained in paragraph 9 of the witness statement of the accused person. He also admits that he was given GHC15,000.00 by the buyer. I find as a fact from the testimony of Accused person, that there was an outstanding balance in addition to the GHC15,000.00 which is a sum admitted to have been received by him.

13. On the second element offence, dishonest appropriation arises where the appropriation is made by the accused with an intent to defraud or where the

appropriation is made without a claim of right. The mental element (mens rea) is very important for one to be convicted of the offence of stealing. In the case of Antwi v The Republic [1971] 2 GLR 41, it was reiterated that the prosecution must prove that the accused committed the act with the intention that some person may be deprived of the benefit of his ownership, or the benefit of his right or interest in the thing, or in its value or proceeds. Therefore, in the absence of the mental element of the intention to steal, the offence of stealing will not suffice.

14. The accused person also testified per his witness statements and tendered in evidence to prove that he was involved in a gory and fatal car accident which explains why he was not also able to meet with the complainant to give him the money and rather deposited the proceeds with two persons for safe keeping for the complainant. He also stated per his witness statement that he persistently told the complainant to come for the proceeds but he refused on the grounds that he (the complainant) wanted the buyer to pay the outstanding balance to the initial deposit before he would come for the money. He testified that he gave the deposited GHC15,000.00 in the safe custody of Ken and Oga Patrick. Are these the garage owners? Why haven't any of these persons not testified or given a statement to the police? As testified, he due to the motor accident he gave the money to these two people. How did the accused person make the safe deposit after the accident? was it by a bank transfer, mobile money transfer, physical case?

15. Under cross-examination the accused person was challenged about paragraph 5 of his witness statement,

'5. I do not own a garage personally but I made arrangement with a garage owner who permitted me to display vehicles that people bring to me to sell', he responded that he and two other persons did own a garage rented for two years, for which he had access to. Are these two persons Ken and Oga Patrick referred to in paragraph 10 of his

witness statement? If so why refer to them as he did in paragraph 10 and not as partners or directors of a company?

16. The accused person also denied under cross examination that the complainant did not bring the car to him in his personal capacity but rather to the garage by name 'Kings Garage'; which is a company name. The accused person later described 'the company' as a Partnership under cross –examination. These responses are clearly inconsistent with his evidence in chief and cautioned statement which was not objected to but rather under cross examination this very statement was denied as not bearing what he stated. The accused person claimed he does not personally own a garage but made arrangements with the garage owner who permitted him to display the cars at his garage. In his evidence in chief, the accused person claims that he left the money with Ken and Oga Patrick after he was involved in a motor accident. Under cross examination the response of accused person, he claimed again that when he was sick , when a sale was made they called the complainant and asked him to bring the documents for his money. Again, these are inconsistent. Under further cross-examination, he explained that upon his return after the accident his two partners had left and one had a stroke and was at home. Yet in his evidence in chief, his partners had left and were nowhere to be found. The question remains, where did the money; proceeds of the sale, if at all the GHC15,000.00 go to? Did he lodge a complainant with the police?

17. Again on 29th June 2023, under cross examination the accused did a turn around that the car in issue, that is the last car; the 10th car, was sold by his partners and he was not around due to his accident. In his cautioned statement contains the following ;

'..... I have been able to sell all the ten cars. However I failed to refund all the money due him. I have been able to give him only the money for 9 cars leaving one at the cost of GHC23,000.00. I have failed to pay this money because after selling the car I used the money

to do my own business which failed me. I am however willing to pleasing with him to give me some time to refund his money to him'

There are clear inconsistencies in the evidence in chief of the accused person as against the responses made under cross examination. Why so much inconsistencies, and more so what are his intentions in giving such a contradictory testimony? In explaining whether his responses differ and if the witness statement was actually his, his response was that his lawyer drafted it, but didn't add up some information. That notwithstanding he did admit under oath that the witness statement was his.

18. When it comes to the defence of an accused the court is guided by the three pronged approach laid down by the Supreme Court in the case of **Lutterodt v Commissioner of Police [1963] 2 GLR** where the court noted as follows;

19. *"Where the determination of a case depends on facts and the courts forms the opinion that a prima facie case has been established, the court should proceed to examine the case for the defence in three stages: Firstly it should consider **whether the explanation of the defence is acceptable**, if it is, that provides complete answer, and the court should acquit the defendant. If the court does not consider the explanation to be true or if the Court finds itself unable to accept the explanation then it should proceed to **consider whether the explanation is nonetheless reasonably probable**. If the Court should find the defence to be reasonable probable then the accused should be acquitted, And lastly quite apart from the defendant's explanation or the defence taken by itself, the court should **consider the defence such as it is together with the whole case** i.e prosecution and defence together, and be satisfied of the guilt of the defendant beyond reasonable doubt before it should convict, if not, it should acquit.*

20. This has been further reiterated in several case law findings such as **Faisal Akilu v The Republic JELR 68825 (SC)**, **The Republic v Eugene Baffoe Bonnie JELR 80375 (HC)** to name a few. From the defence of the accused as given above, although he has no burden he could have statement caused his partner who has or had a stroke to corroborate his story. Why did the accused person tell complainant that he owns a garage when he knew he did not? Without relying on his cautioned given to the police, these inconsistencies are an indication that he is not credible.
21. The accused person failed to return the sum GHC15,000.00 and he does not deny complainant came severally to claim the money. I find as a fact that the accused person could not be located by the complainant. Accused person explained he was involved in an accident. For how long was he in the hospital? Why did he not disclose the true ownership of the company/ partnership to the complainant? The accused person in my humble view is not credible and has been untruthful and I find from his actions, and inconsistent responses that the element of dishonesty proved in respect of the GHC15,000.00 which he admits was collected from the buyer.
22. Having failed to raise reasonable doubt, distinct from fanciful doubt. I find the accused person guilty and convict him.

SENTENCE:

After conducting a pre-sentencing hearing, and guided by the decision in Kingsley Amankwah a.k.a Spider v The Republic (2021) DLSC 10793 at pages 30-33, per his Lordship Dotse JSC. relying on Banahene v Republic (2017-2018) SCGLR 606, in determining the length of a sentence the court held that the judge should consider the intrinsic seriousness of the offence, the degree of revulsion felt by law abiding citizens of the society of that particular crime, the pre-meditation with which the criminal plan was

executed, the prevalence of the crime within that particular locality where the offence took place, the sudden increase in the incidents of the particular crime and mitigating or aggravating circumstances such as extreme youth, good character etc.

I have also given due regard to sentencing guidelines in Ghana, and in particular, the family and social background of the accused person. The accused after sentencing was deferred has paid the sum of GHc28,000.00, the subject matter of the charge. The punishment for stealing is contained under section 296(5) Act 30, with a term not exceeding 25 years imprisonment. Having considered these factors, the accused being a 1st offender, having paid the subject matter sum, against a lengthy trial, I balance these factors and, the accused person is sentenced to 14 days imprisonment in addition to the payment of a fine of 200 penalty units or in default serve 6 months imprisonment. The sentence is effective today.

The sum of GHc28,000.00 is to be paid to the complainant by way of Restitution.

.....SGD.....

HH ELLEN OFEI-AYEH(MRS)