

IN THE CIRCUIT COURT OF GHANA HELD AT CIRCUIT COURT '2', ACCRA ON  
MONDAY, 25<sup>TH</sup> MARCH, 2024 BEFORE HIS HONOUR ISAAC ADDO, THE  
CIRCUIT COURT JUDGE

CASE NO: D4/64/2024

THE REPUBLIC

VRS

KOFI SAKYI @ ISAAC @ MOSQUITO

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ACCUSED PERSON PRESENT

CHIEF INSPECTOR JONAS LAWER FOR THE REPUBLIC PRESENT

NO LEGAL REPRESENTATION FOR ACCUSED PERSON

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### JUDGEMENT

The Accused person was arraigned before this Court on the 19<sup>th</sup> February, 2024 charged with the offence of Stealing contrary to section 124(1) of the Criminal Offences Act, 1960 (Act 29). The Accused person pleaded Not Guilty to the charge after same had been read out and explained to him. The Accused person accordingly submitted himself to full trial.

The Particulars of Offence read as follows:

**“KOFI SAKYI @ ISAAC @ MOSQUITO, TAXI DRIVER, AGED: 26:** For that you on 21/01/2024 at Accra New Town, Accra in the Greater Accra Region and within the

jurisdiction of this court did dishonestly appropriate one Hyundai I10 with registration number GS 5447-22 valued GH¢75,000.00 the property of Fatima Zara Ali.”

### **THE FACTS OF THE CASE**

In the month of September, 2023, the Accused person approached the complainant that he wanted to work with the complainant’s taxi cab since he was unemployed. The complainant agreed and handed over the ignition key of the car to the Accused person. The Accused person had been picking the complainant’s daughter to and from school as his additional duty. On the 21<sup>st</sup> January, 2024, the complainant was expecting the Accused person to pick up her daughter to school but the Accused person did not show up. The complainant contacted the Accused person on phone but he gave excuses that the car had developed a mechanical fault and he was fixing it. The complainant arranged for a different means for her daughter to be taken to school. Later in the afternoon on the same day, the complainant again called the accused person to pick her daughter from school but to no avail since his phone was switched off. The Accused person never showed up not even the following day making his whereabouts together with the car unknown to her. The complainant became alarmed and started looking for the Accused person together with the car. On the 5<sup>th</sup> February, 2024 at about 1:30am, intelligence led to the arrest of the Accused person from his hideout at Agona Swedru.

The prosecution called two (2) witnesses namely the complainant and the investigator. The testimony of PW1 (Fatima Zara Ali) is a rehash of the facts of the case presented by the prosecution. PW1 tendered in evidence photographs showing the vehicle as well as documents covering the vehicle.

PW2 (No. 55062 Detective Lance Corporal Samuel Obeng) investigated the case. PW2 tendered in evidence the Cautioned and Charge Statements of the Accused person without any objection.

At the close of the case of the prosecution, the Court determined that a prima facie case had been made out against the Accused person. The Court therefore called on the Accused person to enter into his defence. In opening his defence, the Accused person opted to give evidence from the Witness Box.

### **THE CASE OF THE ACCUSED PERSON**

In opening his defence the Accused person testified himself and did not call any witness. The Accused person told the Court that on that fateful day, he was using the car when it was snatched from him. According to the Accused person, he does not have a witness and had told his grandfather to sell their plot of land to pay the complainant.

The legal issue that emerged for determination at the end of the trial was whether or not the Accused person dishonestly appropriated the taxi cab belonging to the complainant.

### **THE LAW AND EVALUATION OF EVIDENCE**

Stealing is defined at Section 125 of Act 29 as follows:

*“A person steals who dishonestly appropriates a thing of which that person is not the owner”.*

The definition of stealing therefore requires the prosecution to prove the essential elements of the offence. In the case of *The State vs. W. M. Q. Halm and Aryeh Kumi Crim. App Nos. 118/67 and 113/67, 7 August, 1969; (1969) CC155*, the Court per Akufo Addo, C.J., Ollennu, Apaloo, Amisah JJ.A and Archer J stated the three essential ingredients which prove a charge of Stealing under our criminal law as:

*“(i) That the person charged must not be the owner of the thing allegedly stolen;*

(ii) That he must have appropriated the thing;

(iii) That the appropriation must have been dishonest." See also Lucien vrs

The Republic [1977] 1 GLR 351-359 at holding 2.

It is not in dispute that the taxi cab belonged to the complainant. What is also not in dispute is the fact that the complainant handed over the vehicle to the Accused person to use for work on commercial basis. The defence of the Accused person was that he was driving the vehicle when it was snatched from him.

Section 122 (2)(3) of Act 29 defines Appropriation as follows:

(2) 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 of the benefit of the right or interest in the thing, or in its value or proceeds, or part of that thing.

(3) An intent to deprive can be constituted by an intent to appropriate the thing temporarily or for a particular use, if the intent is so to use or deal with the thing that it probably will be destroyed, or become useless or greatly injured or depreciated, or to restore it to the owner only by way of sale or exchange, or for reward, or in substitution for another thing to which that owner is otherwise entitled, or if it is pledged or pawned.

Section 120(1) of Act 29 defines dishonest appropriation as follows:

*"An appropriation of a thing is dishonest*

*(a) if it is made*

*with an intent 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".*

In the case of *Salifu v. The Republic* [1974] 2 GLR 291, Ata-Bedu J stated:

*“There is no doubt that the crucial ingredient or element in a charge of stealing is dishonest appropriation.”*

What then was the intention of the Accused person in dealing with the vehicle? To be able to prove the state of mind of the Accused person at the time of dealing with the vehicle, the prosecution shall be required to prove intent or knowledge or malice of the Accused person and this will be determined by the evidence adduced at the trial. Mr. P.K. Twumasi in his book “CRIMINAL LAW IN GHANA” at page 77 stated as follows:

*“The general principle of our law is that intention, like many other states of mind, is incapable of direct proof; it is always inferred from proven facts.....”*

From the evidence adduced at the trial, the Accused person failed to turn up to pick the complainant’s daughter to and from school. The next day, the Accused again failed to show up. In the defence of the Accused person, he told the Court that he was driving the car on that day when it was snatched from him. What is interesting is the fact that the Accused person did not report the alleged snatching of the vehicle to the complainant. He also did not make a report to the police after the alleged incident but rather decided to go into hiding. From the 21<sup>st</sup> January, 2024 that the complainant did not see the Accused person, it was on the 5<sup>th</sup> February, 2024 that the complainant saw the Accused person when he was arrested by the police.

In his Cautioned Statement given to the police on the 5<sup>th</sup> February, 2024, this is part of what the Accused person told the police:

*“..... I struggled with them and nothing else again until the following morning 23/01/2024. I found myself at Avenor, Accra and picked a car home at Accra New Town but upon reaching*

*there, I realized the car is not parked at where I normally parked same and asked my friends whether they have spotted my car somewhere but they responded no and was even surprised. That I explained what I can recollect to them. One Maxwell who is also using taxi picked me around where I remember going throughout the night but we could not trace the car. Later my car owner been the complainant called me to pick her children to school but I told her I am at Achimota having some fault on the car. She later called that the children have closed from school if I can go and pick them home. I could not open up to her and later off my phone."*

Clearly, the defence of the Accused person is an afterthought and only designed to mislead the Court. All the evidence adduced at the trial points to one and only one conclusion, that the Accused person dishonestly appropriated the taxi cab belonging to the complainant. The Court finds the Accused person herein guilty of the offence of Stealing and he is accordingly convicted.

**SENTENCING:**

In sentencing the Accused person, the Court took into consideration the fact that he is a first-time offender and a young man. The Court also considered the period spent in police lawful custody by the Accused person in compliance with Article 14(7) of the 1992 Constitution.

However, considering the fact that the vehicle has not been retrieved and also the fact that the complainant has been deprived of her taxi cab valued GH¢75,000.00, the Court will pass a fairly deterrent sentence on the Accused person. The Accused person is hereby sentenced to serve a prison term of Sixty (60) months IHL.

**(SGD.) ISAAC ADDO**  
**CIRCUIT COURT JUDGE**  
**25<sup>TH</sup> MARCH, 2024**

