

IN THE DISTRICT COURT HELD AT WEIJA, ACCRA ON NONDAY THE 31ST
DAY OF OCTOBER, 2022 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS),
MAGISTRATE.

SUIT NO. G/WJ/DG/290/2020

THE REPUBLIC
VRS
BRIGHT AGYAPONG

ACCUSED PERSON IS PRESENT AND SELF REPRESENTED
CHIEF INSPECTOR AGALIK SALIFU PROSECUTING FOR THE REPUBLIC

JUDGMENT

The accused person was arraigned before this court on a charge of stealing contrary to section 124(1) of the Criminal Offences Act, 1960 (Act 29) as amended.

The accused person pleaded not guilty to the charge preferred against him. The court proceeded to hear the evidence adduced by the prosecution in support of the charge.

BURDEN OF PROOF

It is trite that the burden of proof in criminal cases rests on the prosecution and the standard of proof is proof beyond reasonable doubt.

Section 11(2) of the Evidence Act, 1975 (N.R.C.D 323) states as follows;

“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 a fact beyond a reasonable doubt.

In **KWEKU QUAYE alias TOGBE v. The REPUBLIC, CRIMINAL APPEAL NO. J3/08/2020 dated 28th July 2021**, Prof. Mensah Bonsu (Mrs.) JSC delivered herself as follows;

“the burden thus has two aspects; the duty to lead evidence on any fact required to be proved and the duty to provide sufficient evidence to persuade a reasonable mind as to the existence of any fact otherwise known in American jurisprudence as the “the burden of going forward” and the “burden of persuasion. To satisfy the burden of persuasion, the standard of proof beyond reasonable doubt must be met.

In **MILLER v MINISTER OF PENSIONS [1947] 2 All ER 372**, Lord Denning explained Proof beyond reasonable doubt as follows;

“It need not reach certainty but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. The law will fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is strong against a man as to leave a remote possibility in his favour which can be dismissed in a sentence, of course it is possible but not the least probable, the case is proved beyond reasonable doubt but nothing short will suffice.”

In the case of **COMMISSIONER OF POLICE v ISAAC ANTWI [1961] GLR 412**, the Supreme court held among others that the fundamental principles underlying the rule of law are that the burden of proof remains throughout on the prosecution and the evidential burden shifts to the accused only if at the end of the case for the prosecution, an explanation of circumstances peculiarly within the knowledge of the accused is called for. The accused is not required to prove anything; if he can merely raise a reasonable doubt as to his guilt, he must be acquitted.

Section 10(1) of NRCD 323 provides that the burden of persuasion required of the accused persons is

“to raise a reasonable doubt concerning the existence or non-existence of a fact or that he establishes the existence or non-existence of a fact by a preponderance of probabilities.”

Section 11(3) of NRCD 323 also provides as follows;

“In a criminal action, the burden of producing evidence when it is on the accused as to any fact the converse of which is essential to guilt requires the accused to produce sufficient evidence so that on all the evidence, a reasonable mind could have a reasonable doubt as to his guilt.”

PROSECUTION’S CASE

The salient facts upon which the accused person was arrested and arraigned before this court as presented by the prosecution are that the complainant Michael Konglo is a motor mechanic who lives at Buleimi at Gbawe whilst Accused person lives at East Legon. In the month of February 2020, accused and one other currently at large took an unregistered royal motor bike value unknown to the complainant from his house to sell. Complainant went for a test drive with the motorbike. The accused person and his accomplice currently at large waited for four hours and when complainant failed to return, they unlocked a Suzuki motor bike with registration number M-15-GR 1032 valued at GHC8,000.00 parked by the complainant in his house and bolted with it.

On 7th June 2020, complainant spotted accused person at Kwame Nkrumah Circle and caused his arrest. During investigation, accused denied the offence in his investigation caution statement and said his accomplice at large only known as Gaza bolted with complainant’s motor bike. Accused person led the police to Agiriganor near East Legon where accused claimed Gaza resides but he could not be traced. On 10th June 2020, accused was granted bail to assist police to retrieve the motor bike but failed to cooperate and was handed over to Police by his surety who expressed his willingness to withdraw. After careful investigation, accused was charged with stealing and arraigned before this court.

The prosecution called the following witnesses in support of their case:-

PW1 - Michael Konglo

PW2 - Detective Inspector Gabriel Kudjawu, the investigator

PW1 testified that in the month of February 2020 at about 4pm, the accused person and one other person came to him in his house at Gbawe Bulemi with an unregistered royal motorbike for sale. He testified further that he left the two in his house to have a test ride to check the performance of the motorbike. He added that unfortunately the motorbike had a flat tyre and delayed him in returning the motorbike. According to him, he returned to his house and to his surprise, the

accused person and the other person had bolted with his Suzuki motorbike which he had parked in his house. He concluded that on 2nd June 2020 in the morning, he spotted the accused person at Kwame Nkrumah Circle and caused his arrest and handed him over to the police for necessary action.

It is the case of PW2 that the complainant, PW1 arrested and brought the accused person to the station with an unregistered black royal motorbike and reported that during the month of February 2020, accused and two others names unknown and currently at large stole a Suzuki motor bike with registration number M-15-GR 1032 valued at GHC8,000.00 belonging to one Benjamin Amedzor given to him to repair. It is the further case of PW2 that he obtained an investigation caution statement from the accused person who denied the offence and stated that one of his friends only known as Gaza with whom they brought a motorbike to PW1 unlocked complainant's motorbike and bolted with it after they waited for PW1 for hours for him to return the motorbike offered to him for sale.

He added that the accused person led the police to Adjiringanor where the supposed Gaza resides but the said Gaza could not be traced and careful investigations, accused person was charged with the offence of stealing and arraigned before this court.

THE CASE OF THE DEFENCE

The pith of the evidence of accused person in his caution statement dated 8th June 2020 given to the police in Twi and recorded in the English language in the presence of Martin Ankamah and tendered in evidence as Exhibit D was that in the month of February 2020 a friend of the accused person named Paa Nii informed him of his willingness to dispose of his unregistered royal motorbike. According to accused person, he knew complainant as a motor bike mechanic and communicated same to him. The complainant therefore requested that the accused person and his friend bring the motorbike to him at Mallam for viewing. During same month, the actual day he cannot remember, about 4pm, accused person and his friend took the motorbike to complainant at Bulemi Gbawe. Complainant requested to have a test ride of the motorbike to check the performance of same. Accused person and his friend agreed and allowed the complainant to test the motorbike. According to the accused person, complainant moved the motorbike away and for about five hours of waiting, he never returned. His friend Paa Nii accused him of conspiring with the complainant to steal his motorbike and seized his mobile

phone from him. He added that his friend got angry and took the Suzuki motorbike parked by the complainant in his house away. He said that he called complainant several times on phone to inform him about what his friend had done but he failed to pick up his calls and so he also left.

On 7th June 2020 in the morning, accused person said complainant spotted and arrested him at circle and that the motorbike is with his friend Paa Nii at East Legon.

Accused person's own version of events before this court is that initially, he used to live at circle until a good Samaritan met him and took him to East Legon. At East legon, he met two boys who lived with him in the same vicinity. It is the case of the accused person that one of the boys informed him that he was selling his motorbike and was looking for a buyer. It is the further case of the accused person that he called the complainant on phone and told him about the sale of the said motorbike and he expressed an interest in the motorbike. They showed the complainant a photograph of the said motorbike. Accused person added that since both the owner of the motorbike and the complainant are ewes, he handed over the phone to the owner and the parties spoke in ewe. According to the accused person, he did not understand what they said to each other and that after the conversation, complainant requested that he brings the owner of the motorbike to the Gbawe cementary where he will meet them and take them to his house at Bulemi. Accused person informed the court that he went with the owner of the vehicle to complainant around 4pm where complainant took them to a bar and said he was going to collect money for them and so they should wait for him. He stated further that they waited till about 11pm and the complainant was nowhere to be found. He explained that he called the complainant until the battery of his phone ran down. He added that the owner of the motorbike became suspicious and told him that he had connived with the complainant to steal his motorbike from him and seized his phone. He said he tried to look for the complainant but on his way back, he saw the owner of the bike on complainant's motorbike and he took his phone from him. It was then that he realised that the complainant had called him about 13 times. He returned the call and asked why he stayed for so long. Complainant asked where his motorbike was and he told him that he had not taken his motorbike and that he only brought the two boys to him since he had spoken to them in ewe. After a while, complainant caused his arrest and at the police station, he was granted bail to enable him look for the two boys. He later found their location and alerted the complainant but the complainant said he was afraid because where they were located was a

den of robbers. Since then complainant has been fighting him any time he comes into contact with him.

At the end of the trial the issue that was set down for determination by the court is whether or not the accused person is liable for stealing the Suzuki motorbike the subject matter of this dispute?

EVALUATION OF THE EVIDENCE AND APPLICATION OF THE LAW

Section 124(1) of Act 29 provides as follows;

“A person who steals commits a second degree felony.”

Section 125 of Act 29 defines stealing as follows;

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

Azu Crabbe CJ (as he then was) in the case of **AMPAH v THE REPUBLIC [1977] 2 GLR 171, CA** held as follows;

“To establish the offence of stealing, the prosecution are required to prove only the three elements of: (i) dishonesty; (ii) appropriation; and (iii) property belonging to another person.”

On dishonest appropriation, section 120(1) of Act 29 provides as follows;

An appropriation is dishonest if it is made with intent to defraud or if it is made by a person without claim of right and with a knowledge or belief that the appropriation is without the consent of a person for whom that person is a 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 **AMPAH v THE REPUBLIC** cited supra, the court indicated that there are two kinds of dishonest appropriation: an appropriation made without claim of right and an appropriation without the consent of the owner. Proof of either one would be sufficient evidence of dishonest appropriation. The court further held that a person who employs deceit cannot rely on consent as a defence to a charge of stealing because consent obtained by deceit is void.

In **STATE v AMOAKO [1967] CC 58**, where an accused held some monies belonging to his employers because he had not been paid for some months, the court held that he had no authority to pay his own salary from the amount he held nor would the council have consented if he had informed them of his intention to withhold the monies. Therefore the appropriation was dishonest.

On Appropriation, section 122(2) of Act 29 provides 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 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.

In **ANING v. THE REPUBLIC [1984-86] 2 GLR 85**, it was held as follows:

“If counsel is right, then no one can be convicted of stealing property of the Ghana contingent if he is found with the goods in its area of operations. The truth of the matter, however, is that even in those jurisdictions where a “carrying away” is an essential part of the offence of larceny it has been held that a bare removal from the place in which the thief found the goods, though he does not make off with them, is sufficient.”

On ownership, section 123(3) of Act 29 provides;

In proceedings, in respect of a criminal offence mentioned in subsection (1), it is not necessary to prove ownership or value.

In **LUCIEN v THE REPUBLIC [1977] 1 GLR 351**, the appeal against the conviction of the appellant was dismissed because the offence had been made out even though ownership of particular articles had not been proved.

From the evidence, the complainant PW1 informed the court at paragraphs 5, 6,7 and 8 of his witness statement that in the month of February 2020, the accused person and one other person came to him in the house Bulemi with an unregistered royal motorbike for sale. According to him, he left the two in his house and went to have a test drive to check the performance of the bike unfortunately, the bike had a flat tyre and he delayed returning the bike. He said that he

returned to his house and to his surprise, the accused person and the other guy had bolted with the Suzuki Motorbike he had parked in his house.

During cross examination of the complainant who is PW1, the following information was gathered;

Q: How do you know that I was the one who took your motorbike?

A: when I came back, you and your friend were not in my house. So I called the accused person's line and he told me that they took the motorbike away and will bring it the following day. The following day, I was expecting them to bring back the motorbike, when I called him his phone was switched off. In the month of June, I got him arrested at Kwame Nkrumah circle and I handed him over to the police

Q: I am putting it to you that you never called me.

During cross examination of the accused person by the prosecution, the following exchanges were gathered;

Q: Did you lead the police to adjiringanor to arrest your accomplice one Gaza at large?

A: We went to Gaza's house but met his absence. I took the police to Gaza's sister's house but we did not meet him there. His sister took the number of the investigator and she also gave her number to the investigator. I don't know what happened thereafter

Q: Can you tell the court the purpose of your visit to Gaza's house with the police?

A: I was not the one who took the motorbike so I led the police to Gaza's house to enable the police retrieve the motorbike from him

Q: I am putting it to you that you have collaborated with your accomplice who is at large to steal the motorbike from the complainant

A: My lord, that is not true.

From the evidence before this court, I find that the accused person went to the house of the complainant with one other person. I again find that the Suzuki motorbike the subject matter of this dispute was not in the house of the complainant when he returned from testing the royal motorbike.

I find that accused person stuck to his story throughout and never wavered under cross examination. He asserted that in order to establish his innocence, he took the police to the house of the person he claimed had appropriated the motorbike and further took the police to the house of the sister of the said person. Accused person's assertion was not denied by the prosecution neither did the prosecution provide evidence of investigations conducted to ascertain the role played by the said Gaza if any at all.

I find that the story of the accused person has created reasonable doubts as to whether or not the accused person was indeed the one who dishonestly appropriate the Suzuki motorbike or whether it was the said Gaza?

In *Kugblenu v The Republic* [1969] CC 160 CA, it was held as follows;

"it is trite law that the onus on the prosecution is to prove their case beyond reasonable doubt. This applies to all material issues and matters which form the pivot of the case of the prosecution or the pillar or foundation of the case upon which the case rests. If the prosecution leads evidence which creates uncertainty, they have failed and the accused should be acquitted."

Applying the law cited supra to the facts of the present case, I find that the prosecution has failed to prove the guilt of the accused person beyond reasonable doubt and accordingly, the accused person is hereby acquitted and discharged.

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H/W RUBY NTIRI OPOKU (MRS)
(DISTRICT MAGISTRATE)