

IN THE DISTRICT COURT SITTING AT AMASAMAN ON FRIDAY THE 20TH
DAY OF OCTOBER, 2023 BEFORE H/W STANISLAUS AMANOIPO –
MAGISTRATE

SUIT NO. CC7/85/22

THE REPUBLIC

VRS

KOFI SAMMY

ACCUSED PERSON PRESENT
C/INSPR. BEATRICE APPIAH ACHIAA PRESENT
ANTHONY COBBINA FOR ACCUSED PERSON

J U D G M E N T

1. The Accused person is before this Court on the charge of stealing contrary to Section 24 (1) of the Criminal and Other Offences Act 1960 (Act 29). The Accused person in his plead pleaded not guilty to the charge.
2. The Prosecution in brief facts says the Complainant, Confidence Nyarko, a welder lives at Ofankor whilst the Accused person, Kofi Sammy a Distiller resides at Agogo in the Ashanti Region. That during the month of November, 2021, one Kwame Appiah, a resident in the United States of America shipped to Accra unregistered accident Chevrolet Cruz salon car valued GH¢60,000.00 and instructed the Complainant to pick same from Kokomlemle to his shop at Mile 7 for body works. He then promised shipping the parts to the Complainant later to begin work on the car.

In the month of April, 2022, the Accused person who used to run errands for Kwame Appiah went to Complainant to inform him he, Accused person has been sent by Kwame Appiah to tow the car to his house until the parts were

shipped to Ghana. The Complainant is said allowed Accused person to tow the car away. On 23rd July, 2022, Kwame Appiah called the Complainant and Complainant informed him Accused person had towed the car away to his house. That Kwame Appiah informed Complainant he never gave the Accused person such instruction to tow the car away and demanded his car from the Complainant. Complainant, according to the Prosecution, lured the Accused person and caused his arrest by Mile 7 Police Station where a formal complaint lodged against Accused person. The Accused person was re-arrested and put before the Court as charged.

3. The Accused person is facing the charge of stealing. The Prosecution in proof of charge must show that Accused person dishonestly appropriated property (car) belonging to another person. See the case **Ampah vs The Republic (1977) 2 GLR 171, CA.**

The burden therefore lies in the prosecution. The law is that Accused person is innocent until proven guilty as provided for by Article 19 (2) (1) of the 1992 Constitution. The Prosecution is to prove the guilt of the Accused person with the level of certainty required by law. See the case of **Yeboah vs The Republic (1972) 2 GLR 281.**

4. To prove the charge against the Accused person, Prosecution called in all three (3) witnesses including the Investigator.

PW1, the Complainant's evidence is that in November, 2021, one Brother Kwame currently living abroad instructed him to pick his Chevrolet Cruz car from Kokomlemle to work on it, the said car being an accident car by towing the car to his shop at Mile 7. That he wrote down the parts needed for the works which he communicated to the car owner. It was in the course of communication that he introduced Accused person to him as a friend. True to that, at one time, Accused person called the owner of the car who sent GH¢2,000.00 to him.

However, whilst he waited for the parts for the works, the Accused person about two months ago (date on statement) came claiming the car owner had sent him to tow the car to his house and to return it when the parts are ready to be fixed. Further that, Accused person demanded the GH¢2,000.00 sent to him which he refunded to Accused person where the Accused person towed the car away from his shop.

According to Complainant, on 25th July, 2022, Brother Kwame called to know the status of the car which he told him the Accused person had towed the car away per the instruction he had given. Brother Kwame denied knowledge of any such instructions to the Accused person. On hearing this, accordingly to Complainant, he caused the arrest of the Accused person where Accused person told him he had sold the car to dealers in scrap.

PW2 is also a mechanic at the shop of Complainant. That Accused person usually checks on the car at Complainant's shop periodically when he introduced himself as a brother to the car owner.

That on occasion, Accused person requested from Complainant to release to him money that had been given to Complainant to buy spare parts in fixing the car which according to the witnesses, the Complainant did as requested. In a month's time Accused came to the yard with a towing car to inform Complainant that his brother had asked him to tow the car to his house at Ashongman Estate till the spare parts are shipped to Ghana by his brother. And in his presence, Complainant released the car to be towed away. The witness says he blames Complainant for not calling the owner to confirm the Accused person's assertion before releasing the car to Accused person.

Then months' later, Complainant came to inform him the owner of the car had called him asking about the car and when he informed him, Accused person had towed the car away, the owner denied knowledge. This made Complainant to cause Accused person's arrest.

The Investigator in evidence tendered Complainant's statement – Exhibit A, cautioned statement as well as charge statement of Accused person as Exhibit B and E. The statements of witnesses as well as documents covering the car were also tendered by the Investigator resulting in the charge against the Accused person.

5. The Accused person however, has denied the charge against him. He does not deny taking the car from the Complainant's shop. Therefore, per his witness statement filed on 23rd May, 2023 and a further supplementary statement, the Accused person says the owner of the car is his friend who

pleaded he takes a loan from Quick Credit for his wife which was intended to be used to clear his cars at Tema Port and promised repayment within two weeks, which happened during the lockdown in 2020 Covid year.

That the loan was GH₵10,000.00 but the owner's wife only collected GH₵5,000.00 out of the amount to clear the goods. In the supplementary witness statement, Accused person attached financial assistance said received from one Mrs. Faustina Quantson dated 5th April, 2021 but for a funeral.

The case of Accused person is that Kwame Appiah failed to pay for the loan which was used to clear the goods which has now become his burden. He has been paying the loan. That he also paid GH₵300.00 used by Complainant to tow the vehicle from Ashongman to his shop. Further that, the owner brought car spare parts to him to sell and used to pay for the loan which left with the mechanic and sold the car for GH₵15,000.00. That he has received only GH₵5,000.00 out of the amount since the buyer is on the run when he heard he had been arrested for selling the car.

However, that the owner had a discussion with him to take the car which he was to sell and pay for the loan taken from the bank. That he has been transacting business for Kwame Appiah since he went abroad as his close friend. In his supplementary witness statement, he tendered their childhood pictures as friends before Kwame Appiah travelled abroad as well as the picture of the car in contention.

6. The controversy set out from the evidence before this Court includes;
 - i) Whether or not the Accused person acted upon the instruction/consent of the owner of the car when he towed the car away from Complainant's shop.
 - ii) Whether he dishonestly appropriated the car.

In the case of **Ampah vrs The Republic (1977) 2 GLR 171, CA**, identified the elements of stealing as;

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

To appropriate a thing, Section 122 (2) says;

“An appropriation of a thing in any other case means, any moving, taking, obtaining, carrying away or dealing with a thing, with the instant that person may be deprived of the benefit of the ownership, or of the benefit of the right or interest in the thing, or in its value or proceeds or part of that thing”.

Section 128 (1) (b) of Act 29 also defined dishonest appropriation as;

“An appropriation is dishonest if it is made by a person without a claim of right and with a knowledge or believe that the appropriation is without the consent of a person for whom that person is trustee or who is the 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 case, the Court of Appeal further indicated that there were two kinds of dishonest appropriation;

- i) An appropriation made without claim of right.
- ii) An appropriation without the consent of the owner.

And that the proof of either one would be sufficient evidence of dishonest appropriation.

From the ingredients stated above, the Prosecution to succeed must lead sufficient and credible evidence to prove a case of stealing against Accused person. After all, the burden of proof lies on the Prosecution.

7. On the issue one, whether or not the Accused person acted upon the instruction/consent of the owner of the car, the Prosecution's evidence is that the Accused person made a false representation to the Complainant, which representation is said has been denied by the owner of the car.

The Accused person has not denied towing the car away but insisted it was with consent. That the owner instructed him to take the car and to sell same to pay for the loan taken used to clear the goods of the owner. Accused person in his supplementary witness statement, tendered evidence of a loan agreement between him and one Mrs. Faustina Quantson titled financial assistance for a funeral. And earlier one also from Madam Akua Benewaa. Accused person's evidence is that the owner's wife and his brother were in the known of these loans. Therefore, that since the owner could not fulfill the payment terms of two

weeks and also that since they could not get the car parts in Ghana to fix the accident damage, the owner who has been his childhood friend asked him to sell the car to pay the loan.

Surprisingly, despite the Accused person mentioning of the names of the owner's wife and the brother to be in the known of the loan taken, which he said he gave GH₵5,000.00 to the wife, the Prosecution is silent on this piece of evidence. No indication of a statement taken from the wife of the owner. This piece of evidence is necessary since the owner is not available himself.

This evidence would have shown if there was appropriation and that it was dishonest.

In this instant, it is not sufficient to say PW1 had a call from the owner who said he never instructed the Accused person to tow the car away or sell it. There ought to be possible evidence to rebut the Accused person's claim thereby clearly the doubt created by the Accused person's evidence. After the law is that,

“A person charged with a criminal offence shall be presumed innocent until he is proved guilty or has pleaded guilty” See Act 19 (2) (c) of the 1992 Constitution.

In the circumstances, the Court finds that Prosecution has failed by evidence to establish the charge of stealing against the Accused person. The Accused person is thus acquitted and discharged.

(SGD)
H/W STANISLAUS AMANOIPO
(MAGISTRATE)