

**BEFORE HER HONOUR GLORIA N.B. LARYEA SITTING AS CIRCUIT COURT
JUDGE AT THE CIRCUIT COURT, MANKESSIM ON THE 17TH DAY OF
OCTOBER, 2022.**

Suit No.: B7/81/2022

THE REPUBLIC

Vrs.

1. OKOABA GYASI alias JUNIOR SCOTT }

ACCUSED PERSONS

2. ERNEST (at large)

JUDGMENT

The accused persons, the first, present in Court and the second at large, were both jointly charged with two counts of conspiracy to steal contrary to sections 23 (1) and 124 of the Criminal and Other Offences Act, 1960 (Act 29) and stealing contrary to section 124 of Act 29 from the complainant a tricycle, its total value being GHC 7,000. To both charges the 1st accused has pleaded not guilty.

The facts briefly put up by the prosecution are that on the 28th of July, 2022 at about 6:45pm, the complainant upon returning from work came upon his driver of his blue tricycle with registration number M-20-CR 1020, the subject matter of the charges (hereinafter called the Tricycle). His driver broke the dreaded news to him that the Tricycle had been stolen from where he parked it the previous night. The driver had parked the Tricycle in front of his house. The complainant's immediate reaction was to mobilize a search party while lodging a formal complaint with the police. The complainant also informed the man who sold the Tricycle to him. Within the expanse of a few hours, the man who sold the Tricycle to the complainant found the 1st accused

person in possession of the stolen Tricycle at Cape Coast and caused his arrest. The 1st accused was initially sent to the Kotokraba Police Station and subsequently transferred to the Saltpond Police Station together with the Tricycle. The complainant was duly informed of the arrest and discovery of his tricycle.

At the trial the complainant (PW1) gave a sworn narration of how his was the owner of the Tricycle. He had handed the Tricycle over to a driver for commercial purposes. On 27th July, 2022, he returned from work to the news from his driver that the Tricycle had been stolen. Immediately he set into motion a search and also reported the theft to the Saltpond Police Station. The complainant recounted that he also relayed the information of the stolen tricycle to the man who had sold it to him. The very next day at about 1:00pm, the said man informed him that he had sighted the Tricycle at Cape Coast and had arrested the 1st accused person.

The man who is the hero of what was threatening to be a tragic story for the complainant testified in confirmation of what the complainant had told the Court. He attested to the fact that the complainant had briefed him about the theft of the Tricycle he had sold to the complainant. He was thus on full alert looking out for the Tricycle. Incidentally, on his way to work that same day, the 1st accused stopped the tricycle he had boarded and requested for a spanner. PW3 recalled that his driver did not have a spanner so they continued their journey only to chance upon the Tricycle at the Adisadel Junction. He stood by it to observe who will come to it. Lo and behold it was the same 1st accused person who had asked for a spanner about five minutes ago. It appeared he had found a spanner and was attempting to remove a tyre of the Tricycle. He drew closer to the 1st accused and the Tricycle and confronted him. The 1st accused person explained that one Ernest, the 2nd accused person at large had asked him to remove the tyre. PW3 said he immediately marshaled on-lookers and the 1st accused was conveyed to the Kotokraba Police Station together with the Tricycle.

PW2 is the investigator in charge of the case. His testimony did not stray far from that of PW1 and PW3. He cemented the case of the prosecution by tendering into Court without objection the caution statement of the accused, his charge statement among other corroborative pieces of evidence.

When the accused was called upon to answer to the case the prosecution had successfully built against him, he told a twisted incredulous tale of how PW3, the same man who sold the Tricycle to the complainant instructed the 2nd accused to take the Tricycle away from the complainant. PW3 had assured him that when he was arrested, he will secure bail and an early release for him. According to the 1st accused, it was the grand plan of PW3 to deprive the complainant of his Tricycle and he commissioned the 2nd accused to do his bidding. The 2nd accused acted accordingly and brought the Tricycle to him. The 1st accused expressed his shock at the turn of events as it was PW3 who had hatched the master plan and used them (1st and 2nd accused persons) as pawns without absolving them of guilt and punishment as he had initially promised. The 1st accused did not rely on any witnesses.

The trial revolves around these two issues;

1. whether or not the accused persons conspired to steal the Tricycle; and
2. whether or not the accused persons did steal the Tricycle.

These issues would be addressed in reverse order. It is unnecessary to much spill ink on the burden of the prosecution to prove the guilt of the 1st accused beyond all reasonable doubt. In so doing the prosecution must successfully establish the ingredients of stealing against the 1st accused. These three ingredients are that the accused has appropriated a thing, the appropriation was dishonest and he is not the owner of the

thing dishonestly appropriated; see section 125 of Act 29 and **Ampah v. The Republic [1977] 2 GLR 171, CA.**

I must promptly declare that the evidence indicates that there is a strong case of theft and conspiracy against the accused persons. The evidence adduced is that the 1st accused person within twenty-four hours of the theft of the Tricycle was found in possession of the Tricycle. The 1st accused has admitted that he was found in possession of the stolen Tricycle and yet he has woven an intricate web of lies to explain why he was in recent possession of the stolen tricycle. The Court has concluded that the explanation proffered by the 1st accused was a pack of lies having juxtaposed it against the caution statement of the 1st accused (Exhibit C). In his caution statement taken a day after his arrest, the 1st accused confessed to stealing the Tricycle in association with the 2nd accused at large. It is relevant to reproduce the material portions of his statement to the police. The 1st accused stated as follows;

“On 22 July, 2022 at 21:00 hours Ernest called me on my cell phone asking me to assist him steal a tricycle at Saltpond which I accepted. On 25th July, 2022 at 21:00 hours myself and Ernest came to Biriha and lodged at his friend’s place, we set off to Saltpond at 12:00 hours. When we got to Saltpond we spotted a blue tricycle and Ernest used his key to spark the tricycle but it was not moving. So I connected the light wires and it moved. Ernest rode the tricycle while I sat in it to Cape Coast. The tricycle was with Ernest till he called me on 28th July, 2022 that the tricycle had developed a fault at Stylers Street, Cape Coast. He then came to pick me up at my workplace to the said place and he left. I was there trying to repair the tricycle when I was arrested by two men who accused me of stealing the tricycle.”

It is worthy to note that this is the statement repeated by the accused in his charge statement (Exhibit F) dated 29th July, 2022. I am at liberty to rely on same as it was duly attested to by an independent witness in his own handwriting. It is also evident that the

confession statement contained in both Exhibit C and F was overflowing with details that could have only be provided by the 1st accused and not manufactured by an overzealous investigator bent on extracting a confession at all cost. The confession of the 1st accused is also in harmony with where and how he was arrested. He was arrested as he attempted to repair the tricycle on the street at which the 2nd accused has reported to him that the tricycle had broken down. The 1st accused has stated that the 2nd accused conveyed him to the scene of the broken down tricycle.

Assuming that the 1st accused had not provided the confession that sealed his fate, the nature of the evidence was such that it would have been impossible for him to wriggle out of a finding of a conviction. The undisputed fact is that the 1st accused was found in possession of a stolen tricycle within a few hours of its theft. He was also not able to provide a reasonable explanation as to how the tricycle had come into his charge a date after its theft. The principles are well settled and the authorities numerous in respect of the doctrine of recent of possession of stolen goods. I give one that clearly enunciates the principle. In the case of **COMMISSIONER OF POLICE v. E.K.A. JOHNSON [1961] 1 GLR 227-228** the Court held as follows;

“The appellant was therefore proved to have been in recent possession of the stolen property, and having offered no explanation to account for that possession, guilty knowledge was rightly inferred.”

The Court confidently follows the footsteps of the above authority in finding that the offence of theft will be imputed upon the 1st accused in so far as he was unable to provide a reasonable explanation as to how the stolen Tricycle came into his possession a few hours after its theft. His explanation is unable to satisfy the following curious questions; why would PW3 contract two persons to steal the Tricycle he had sold to PW1 when there was no evidence of bad blood between the two. Nowhere in the

evidence appeared the suggestion that PW1 still owed PW3 part of the purchase price of the Tricycle for which reason PW3 would seek to re-possess the Tricycle. It is apparent on the evidence that PW1 and PW3 were on cordial terms hence PW1's immediate communication to PW3 of the theft and PW3's readiness to assist which led to the recovery of the Tricycle. If indeed PW3 had caused them to steal the Tricycle, what hindered the 1st accused from confronting PW3 with this truth while he cross examined PW3 in the witness box.

The evidence has undoubtedly exposed the 1st accused as a notorious liar whose words must not be trusted. When the 1st accused was arraigned before this Court, his initial defense which he put forth was that the Tricycle was brought to him by the 2nd accused for him to undertake some repair works on it. He had no knowledge of its theft. As is the usual mark of a guilty man, he completely altered his defense when he assumed the witness box in his defense singing a tale of having been instructed by PW3 to steal the Tricycle. Even if it was the case that PW3 sent them to steal the Tricycle, (which the Court rejects) the 1st accused was still complicit in the theft of the Tricycle in conspiracy with PW3 and the 2nd accused. To say someone commissioned one to steal is not a defense to stealing under the law. Perhaps for a child it may be a defense that he acted as the innocent agent of an adult in committing a crime. This cannot hold for an adult accused person. The 1st accused is a full aged adult who cannot be ignorant of the fact that what he had been allegedly instructed to do by PW3 was stealing. No Court of law can acquit a man of his guilt based on such a haphazard defense. It is upon the above reasoning that I find the 1st accused guilty on count two; stealing of the Tricycle.

It does appear on the evidence as a whole that, at all times the 1st accused worked together with the 2nd accused in execution of their criminal plan to steal the Tricycle. The confession of the 1st accused as contained in Exhibit C is that the 2nd accused invited him on a stealing expedition at Saltpond and he obliged. The 1st accused confessed that

when the key the 2nd accused brought along to the crime scene could not start the Tricycle, he the 1st accused stepped in and cut the wires. Then the 2nd accused drove the Tricycle to Saltpond with the 1st accused in the back of the Tricycle. If this is not team work, then nothing else would pass for teamwork. I am led by the case of **AZAMETSI AND OTHERS v. THE REPUBLIC [1974] 1 GLR 228-246** in which the Court held that;

“The crime of conspiracy consisted in an agreement or acting together by two or more persons with a common purpose for or in committing or abetting a crime whether with or without any previous concert or deliberation. It was not always easy to prove agreement by evidence, but it could be inferred from the conduct of and statements made by the accused persons.”

In the present case, the evidence is unequivocal as to the conspiracy of the 1st and 2nd accused with regards to the theft of the Tricycle. All doubt has been erased and I equally find the 1st accused guilty of conspiracy under Count 1.

In the result the 1st accused is convicted on both Count 1 and 2 and sentenced as follows;

Count 1 – the 1st accused is sentenced to three years imprisonment.

Count 2 – the 1st accused is sentenced to four years imprisonment.

Sentences to run concurrently.

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HH GLORIA N.B. LARYEA

CIRCUIT COURT JUDGE