

**IN THE CIRCUIT COURT HELD AT SOGAKOPE ON THURSDAY, 8TH
DECEMBER, 2022 BEFORE HIS HONOUR ISAAC ADDO, THE CIRCUIT
COURT JUDGE**

CASE NO. CC4/2022

THE REPUBLIC

VRS

ISAAC BRAIMAH

ACCUSED PERSON PRESENT

CHIEF INSPECTOR JACOB AWIAGAH FOR THE REPUBLIC PRESENT

JUDGEMENT

The Accused person was arraigned before this Honourable Court charged with the offence of Stealing contrary to section 124(1) of the Criminal Offences Act, 1960 (Act 29). Upon his arraignment in this Court, the Accused person pleaded Not Guilty to the charge.

THE BRIEF FACTS OF THE CASE

The complainant bought a Zetor tractor with registration number GR 4246Y valued US\$22,200 in September, 2007. The tractor developed some mechanical fault and was parked in the garage with its trailer and plough. Somewhere in 2019, the complainant contracted Accused person who was then a mechanic at GADCO rice farm at Adidome to work on the tractor and return it. The Accused person after maintenance of the tractor relocated it to an unknown destination. All efforts made to reach the Accused person yielded no results. The Accused person was arrested from his hideout in the Afram Plains after a thorough

search. During investigations, the Accused person led police to Gornikope where the Accused person pointed out an abandoned tractor but could not tell the police where the trailer and plough were kept.

In discharging the burden placed upon it, the prosecution called three (3) witnesses to testify in support of its case.

PW1 (Eugene Martinson) testified as the Registrar of Modal College, Sogakope. PW1 told the court that on Friday, 29th March, 2019, they had information that some officers from the National Accreditation Board together with the Nursing and Midwifery Council would be visiting the College. According to PW1, they decided to keep the compound neat and the only obstacle was the tractor with the big and long trailer which was parked in the narrow drive way in front of the car garage, blocking the entrance of the garage. So they called the Accused person to help move the tractor and send it to his house for a day and return it the following day after the visit of the officers from NAB and NMC. The Accused person failed to return the tractor and several telephone calls placed on him proved futile.

PW2 (Seth Sallah) told the court that somewhere in 2020, he contacted his friend called Gayoyo Agodzo who is a tractor operator about his interest to buy a plough for his tractor. According to PW2, his friend informed him that the Accused person needed loan of GHC5,500.00 to solve an urgent issue and that the Accused person wanted to use his tractor's plough as collateral for the loan. So he came into an agreement with the Accused person and gave him the sum of GHC5,500.00 and accordingly collected the plough as agreed. It is the case of PW1 that the Accused person defaulted so he started using the ploughs. PW1

further told the Court that later he realized the ploughs did not belong to the Accused person.

PW3 (Detective Sergeant Courage Akpaloo) investigated the case. PW3 relied on his Witness Statement together with the exhibits attached.

After the close of the case of the prosecution, the Court ruled that a prima facie case had been made out against the Accused person, and so he was accordingly called upon to enter into his defence.

THE CASE OF THE DEFENCE

The Accused person in opening his defence testified himself and called one witness as DW1. The Accused person told the Court that he worked for the complainant when construction of his site was ongoing. That he was the person who cleared the whole site after the building. The Accused person further told the Court that he was the one who led the complainant to meet the elders of Fievie where they collected laterite and stones to fill the site. It is the case of the Accused person that the complainant called him one Saturday afternoon and asked him what help he wanted from him or whether he should build a work site for him in Accra and buy a parcel of land for him. So he told the complainant that he would think about it and give him a response the next day. According to the Accused person, he told the complainant to help him acquire a driver's license and also buy him a tractor if possible or let him use the old tractor. The Accused person further told the Court that the complainant asked him to come for the tractor. Three days later, he went for the tractor through Eugene Martinson (PW1). According to the Accused person the tractor pump was faulty because he had already worked on it before so he removed it and sent it to the

Service Center. The Accused stated that he tried calling the complainant on his Vodafone telephone line to inform him about the new development but to no avail. That he went for the pump from the Service Center but it did not work so he sent it back to Accra where he was given a later date to come for it. It is the case of the Accused person that because his work was not thriving, he got a job at Afram Plains and left to go and work there. The Accused person told the court that he parked the tractor at Akatsi Gornikope but it was only the pump that he removed and took same to the Service Center.

DW1 (Sika Kofi James) told the court that the Accused person showed him the tractor and he realized its pump and clutch were faulty. They tried to fix same but to no avail. According to DW1, they went to the complainant's working place near Cisneros because the Accused person said he had not been able to meet the man to thank him for the gesture done to him. That he went with the Accused person on two (2) occasions but met the absence of the complainant.

The legal issue that emerged for determination in this case was whether or not the Accused person dishonestly appropriated the Zetor tractor belonging to the complainant.

BURDEN OF PROOF

The requirement of the law per Article 19 (2) (c) of the 1992 Constitution is that a person charged with a criminal offence is presumed innocent until he is proved guilty or he pleads guilty. The article reads:

(2) "A person charged with a criminal offence shall -

(c) be presumed to be innocent until he is proved or has pleaded guilty"

The burden of proof in a criminal action therefore totally rests on the prosecution. The mandatory requirement that the guilt of the person charged ought to be established beyond reasonable doubt and the burden of persuasion on the party claiming that a person was guilty, has been provided for in sections 13 and 15 of the Evidence Act, 1975 (NRCD 323). Significantly, whereas the prosecution carries that burden to prove the guilt of the accused beyond reasonable doubt, there is no such burden on him to prove his innocence. At best he can only raise a doubt in the case of the prosecution. But the doubt must be real and not fanciful.

In Republic v. Adu-Boahen & Another [1993-94] 2 GLR 324-342, per Kpegah JSC, the Supreme Court held that:

“A plea of not guilty is a general denial of the charge by an accused which makes it imperative that the prosecution proves its case against an accused person When a plea of not guilty is voluntarily entered by an accused or is entered for him by the trial court, the prosecution assumes the burden to prove, by admissible and credible evidence, every ingredient of the offence beyond reasonable doubt”.

THE LAW AND EVALUATION OF THE EVIDENCE

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”.

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., Ollenu, Apaloo, Amissah 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 v. The Republic [1977] 1 GLR 351-359 at holding 2.

On the part of the defence, that is the Accused person, all that he needs to do by way of producing evidence is to raise a doubt as to his guilt. Woolmington v Director of Public Prosecution [1935] AC 462 is the locus classicus on this principle where the Appeal Court of England per Sankey LC expressed the view that:

“...while the prosecution must prove the guilt of the prisoner, there is no such burden laid on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the jury of his innocence.”

The first ingredient to establish is whether or not the Zetor tractor belonged to the complainant or the Accused person. Whilst the prosecution is praying for the conviction of the Accused person, the latter is also claiming ownership of the Zetor tractor as a gift to him by the complainant. Was the Zetor tractor really gifted to the Accused person by the complainant?

In his Evidence-In-Chief, the Accused person told the Court that the complainant told him to go for the tractor, and this he did through PW1. It is also not in dispute that at the time the Accused person went for the tractor, the complainant was not present and he gave instructions to PW1 to hand over the key to the Accused person. If indeed the tractor was gifted to the Accused person, why did

he allegedly attempt calling the complainant to inform him about the alleged faulty pump? The Court finds the story of the Accused person incredible.

The Accused person submitted a Cautioned Statement to the police on the 13th September, 2021. This was tendered in evidence and marked as Exhibit 'A'. The following is what he told the police:

*"I am an auto mechanic. I formally worked at GADCO Rice Company located at Adidome. About two (2) and half years ago, I was invited by complainant William Aveh who knew me for some time to his house at Sogakope where he gave me some amount of money as a gift to support my child's ill health condition. **Later, he invited me again to his house where he told me to send his Zetor to my house for safe keeping. I sent the tractor to Akatsi and its environs to work for some time and it developed a mechanical fault. Due to the pump problem, I parked the tractor at Gornikope. I gave the traylor to one Sammy who is located at Devego and ploughs was given to Seth at Afife. I did not steal the tractor as alleged. Hence my statement."***

In his Cautioned Statement above, the Accused person told the police that the Zetor tractor was given to him by the complainant to send to his house for safe keeping. This is contrary to what he told the Court in his Evidence-In-Chief and answers given under cross examination. In the case of the State vrs Otchere & Others [1963] 2 GLR 463-531, the Court stated at holding 14 as follows:

"A witness whose evidence on oath is contradictory of a previous statement made by him whether sworn or unsworn is not worthy of credit and his evidence cannot therefore be regarded as being of any importance in the light of his previous contradictory statement unless he is able to give a reasonable explanation for the contradictions"

It is clear from the definition that a person cannot be guilty of stealing unless he is proved to have appropriated a thing in the first place.

Section 122 (2) of the Criminal and Other Offences Act, 1960 (Act 29) defines Appropriation as follows:

“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 some person may be deprived of the benefit of his ownership, or of the benefit of his right or interest in the thing, or in its value or proceeds, or any part thereof”.

The prosecution’s task therefore is to adduce evidence beyond reasonable doubt that the Accused person herein appropriated the Zetor tractor with the intent to deprive the complainant of the benefit of its ownership of the tractor, the subject matter of the charge of stealing. In other words, the Accused person dishonestly appropriated the Zetor tractor.

The Accused person in his Evidence-In-Chief told the Court that the tractor was at Gornikope. In his Cautioned Statement, he stated that the tractor was at Akatsi Gornikope. It is obvious from the Cautioned Statement of the Accused person that the tractor was given to him to send to his house for safe keeping but however found its way to Akatsi Gornikope. By this act, the Accused person appropriated the tractor by moving it from Sogakope to Akatsi Gornikope.

The intention of the Accused person to dishonestly appropriate the Zetor tractor can be deduced from his behaviour and how he gave out some of the parts of the tractor. In his Cautioned Statement to the police, he stated that he gave the trailer

to one Sammy and the ploughs to Seth. PW2 (Seth Sallah) mounted the witness box to confirm that the Accused person used the ploughs of the tractor as collateral for a loan of GH¢5,500.00 from him. The Accused person did all these without the consent of the complainant.

In line with the above, the Court finds the Accused person herein guilty of the offence of Stealing, and he is accordingly convicted.

SENTENCING:

In sentencing the Accused person, I take into consideration of the fact that he is a first time offender and also a young man. However, looking at the gravity of the offence, passing a fairly deterrent sentence on the Accused person will be appropriate. In the circumstances, I hereby sentence the Accused person to serve a prison term of Six (6) IHL.

FINAL ORDER:

The abandoned Zetor tractor and its parts should be released to the complainant.

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ISAAC ADDO
CIRCUIT JUDGE
8TH DECEMBER, 2022