

IN THE CIRCUIT COURT HELD AT JASIKAN ON WEDNESDAY THE 18TH
DAY OF MAY 2023 BEFORE HIS HONOUR JUDGE ALFRED KWABENA
ASIEDU ESQ.

SUIT NO. D7/14/2022

THE REPUBLIC

VRS.

RAZAK MOHAMMED

J U D G M E N T

The accused person is charged with stealing contrary to section 124(1) of the Criminal offences Act, 1960, Act 29. And the particulars were as follows;

RAZAK MOHAMMED, 25 YEARS A BUTCHER, that you on the 25th day of August 2021 at Wurubu in the Jasikan Circuit in the Oti region of the Republic of Ghana and within the jurisdiction of this court did dishonestly appropriate one female cow valued GHS3,500.00 the property of Awuranyi Eric.

THE CASE OF PROSECUTION

The prosecution, in all, called three (3) witnesses in support of its case, the complainant Awuranyi Eric as (PW1), Larry Kofi as PW2, and the investigator, G/L.Cpl. Thomas Kwabla Gbedzi, of the case as the PW3.

The evidence of PW1, was simply that he had information from Alhaji Mahama who is the herdsman in charge of the animals that his cow has been stolen on August 25, 2021 from his Kraal at Wurubu and he started making efforts to locate the missing cow. That he was told by the herdsman they traced the people who stole the animal

towards Kechebi. That he called one Larry Kofi, PW2, who happens to live closer to where the thieves were heading towards to lay ambush for the thief. That later Larry Kofi called to inform him that they have arrested the accused person but three other persons who were with the accused managed to escape. That he hurriedly went there and met the accused person with the missing cow. That together with Larry Kofi and the other witnesses they escorted the accused person with the motor tricycle used to cart the animal to the Police station. The testimony of PW2, was that he had a call from the complainant to the effect that some people had stolen his cow and the people are heading towards Nkwanta so he should try and lay ambush on the road to arrest the people with the cow. It was deep in the night and he thought it was not safe to be on the road alone so he moved to Kechebi Township and stood by the road with other persons. That around 3.00am they heard a noise of an oncoming tricycle from Njare direction and soon after the accused carrying two other persons on his motor cycle escorting the motor tricycle that contained the cow showed up. That they managed to arrest the accused person and the tricycle with the missing cow but the other two persons on the accused motor bike escaped. The accused claimed ownership of the cow having bought same from the Fulani men. That the accused was handed over to the Police together with the Exhibit cow. The evidence of the investigator, PW3, was materially the summary of the testimonies of the first two witnesses. PW3 tendered into evidence Photograph of the retrieved cow as Exhibit A, Cautioned statement of accused person as Exhibit B and the Charge statement of the accused as Exhibit C.

THE CASE OF THE ACCUSED

The case of the accused person is simply that he had two months earlier met the Fulani men as he usually does in Togo where he sometimes buys cattle from as a butcher and he exchanged numbers with them. That about some weeks later he got a call from the Fulani man who indicated to him he the Fulani has an animal so to sell to raise money to cater for his sick father. That he later met with the Fulani man at

Njare, negotiated and bought the animal for GHS2,700. That he hired a tricycle to cart the animal and the Fulani men also joined him on his motor cycle and they were sending the animals to Nkwanta where he does his business as a butcher. That on reaching Kechebi he noticed the tricycle had parked at the barrier and the Fulani men requested to alight for him to check quickly if the tricycle had developed a fault. That when he got there, met a lot more people who had arrested the tricycle alleging that the animal in it was a stolen one. That was when a man came to identify the animal he had bought as belonging to him. That tried as he did, they could not locate the two Fulani men who were on his motor cycle for them to confirm he bought the animal from them. They had apparently escaped. That he was arrested and taken to the Police station and the owners of the animal took the cow away. That he bought and paid for the cow at Njare for GHS2,700.00. That he never stole the cow as alleged and that he does not even know the location of the said kraal where the cow was allegedly stolen from at Wurubu.

BURDEN AND STANDARD OF PROOF

Section 14 of the Evidence Act 1975 NRCD 323 places the burden of producing evidence in criminal cases on the prosecution. And the cases have held that there is no burden at all on the accused to prove his or her innocence. All that the accused needs do is to create doubt in the mind of the court as to facts of the prosecution. The case of Donkor Vs. The State (1964) GLR598 SC held that in criminal trials the burden of proof in the sense of the burden of establishing the guilt of the accused is generally on the prosecution. The failure to discharge the burden should lead to the acquittal of the accused.

On the charge of stealing, section 125 of Act 29 1960 defines stealing as “a person steals who dishonestly appropriates a thing of which that person is not the owner”. The Court of Appeal in the case of Ampah.Vs. The Republic(1977) 2GLR171 held

that in the case of stealing the prosecution must proof three (3) elements; (i) dishonesty, (ii) appropriation and (iii) property of another person.

This means that the prosecution must first prove that the accused did appropriate the property of another and that the appropriation was dishonest.

The case of the prosecution in our present case as above stated is that the accused person has dishonestly appropriated a female cow, captured in Exhibit A, the photograph of the cattle, belonging to the named complainant. The accused person in both his investigation cautioned (Exhibit B) and Charge (Exhibit C) statements denied stealing the animal. There is enough evidence adduced to show that the accused person did appropriate the cow. In fact, the accused person at all material time until he was told he had stolen the cow had appropriated the animal. He confirmed his appropriation of the animal when he went claiming the cow as his at the barrier when the tricycle carting the animal was arrested. The unanswered question is whether the appropriation was dishonest.

On the element of dishonesty it was held in the case of *Ampah vs. The Republic* (1976) 1 GLR 403 @ 413 by Abban J (as he then was) that "It can therefore be said that section 120 (1) of the Criminal Code, 1960 (Act 29), contemplates two kinds or types of dishonest appropriation. The first type is where the appropriation is made with intent to defraud; and the second type is where the appropriation is made without a claim of right and without the consent of the owner. That is, an appropriation with intent to defraud can amount to dishonest appropriation; and that an appropriation without a claim of right and without the consent of the owner is just an alternative definition which the section gives to the term "dishonest appropriation." Proof of an appropriation with intent to defraud or of an appropriation without the consent of the owner, either one of them, can constitute dishonest appropriation. So that proof that an accused person appropriated the subject-matter of the charge with intent to defraud will by itself amount to dishonest appropriation and in such a case further

proof of lack of consent of the owner to the appropriation will be absolutely unnecessary”.

In our present case it was the owner of the animal who raised the alarm and managed through his friends to get the animal intercepted and the accused arrested. A firm indication that he the owner did not consent to the taking of the animal and by implication the appropriation of the animal by the accused was according to prosecution without any claim of right too.

On the contrary the position of the accused person is that his appropriation was with a solid claim of right having bought the animal from the Fulani men at the material time, in firm believe, that the Fulani man was the rightful owner until the animal was intercepted. The investigator of the case, against the insistence by the first and second prosecution witnesses that the accused person stole the animal, stated that his investigation revealed that the accused person bought the cow for GHS2,700.00 and paid for same from the Fulani men. In the main that was the defence by the accused person that he never stole the animal as alleged. That until the animal was intercepted and the Fulani men run away, he at all material times believed the Fulani men he bought the animal from and was riding with on his motor bike was the rightful owner of the animal and never knew the animal was a stolen one. On the record the line of questioning by the prosecutor indicated that he agrees with the accused person that the accused person in fact did buy the animal at the stated price. The following among others ensued during cross examination on the accused by the prosecutor.

Q. Are you aware the Fulani men are just caretakers of the cattle?

A. I know some are caretakers and some also own some of the cattle.

Q. That they sold the cow to you at GHS2, 700.00.

A. That is so

Q. I am putting it to you that you paid GHS2,700,00 for the cow because you know it was stolen.

A. That is not correct some are even bought less than that and yet they are not stolen.

Though it turned out that the Fulani man from whom the accused person bought the cow was not the rightful owner to have lawfully consented and sold the animal to the accused person, I am unable to hold that the appropriation by the accused person of the animal was dishonest. This is because there is no evidence suggestive that the accused person knew before the purchase that the animal was a stolen one. And he took custody the animal after given sufficient and valuable consideration. The testimony of the accused person that he does not even know the location of the Kraal in which the animal was kept and that he bought the animal at Njare instead of Wurubu where the animal was according to the owner before it got missing stood firm on the record. I therefore from the evidence find that the prosecution has failed to satisfactorily prove the guilt of the accused person on the charge of stealing and I according acquit the accused person.

ALFRED KWABENA ASIEDU ESQ

(CIRC UIT JUDGE)