

**IN THE CIRCUIT COURT OF JUSTICE HELD AT DENU ON MONDAY THE 2ND DAY
OF JULY, 2023 BEFORE HIS HONOUR JOSEPH OFOSU BEHOME, ESQUIRE – CIRCUIT
COURT JUDGE**

COURT CASE NO. VR/CT/DE/CC.295/2023

THE REPUBLIC

VRS:

AWASHIE DOUGLAS

ACCUSED PERSON PRESENT.
C/INSPECTOR SETH APPAU FOR PROSECUTION		... PRESENT.
NO LEGAL REPRESENTATION FOR THE ACCUSED PERSON		

JUDGMENT

The Accused person herein was arraigned before this Court, charged with the offence of Stealing: Contrary to Section 124(1) of the Criminal and Other Offences Act, 30/60.

Accused herein pleaded not guilty after the offence was read and explained to him.

In the Republic vrs. Adu Boahen and 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”.

BRIEF FACTS OF THE CASE

The complainant, Norgbe Jeremiah is a commercial motor rider and lives at Torkor a suburb of Aflao. The accused Awashie Douglas is a farmer and also lives at Gbedekorpe, Aflao. On 15th day of April, 2022 about 5:00pm, the complainant parked his Haojue motorbike with registration number M-20VD-1594 at the main entrance of his mother’s House at Avedzi, Aflao. He went into the House and had some conversations with his mother which lasted less than 20 minutes, he returned to pick the motorbike and it was stolen. He then informed his friends about the theft of the motorbike and a witness in this case told him that he saw the accused pushing the motorbike the very day it was stolen. Complainant together with friends searched for the accused but could not locate him. He reported the case to the Police and accused was later arrested. Accused denied the offence in his investigation caution statement. After investigations he was charged with the offence as stated in the charged sheet and now before this Honourable Court.

The prosecution in its bid to discharge the burden placed upon it called four (4) witnesses.

The testimony of **PW1**, Norgbe Jeremiah (complainant) confirmed the facts of the case as presented by the prosecution.

PW2, Moses Srigboh told the Court that on 15/04/2022 at about 5:35pm, he was standing in front of his workshop when he saw the accused person pushing a motorbike towards him, he contends accused branched immediately by his side and at that particular instant **PW3**, emerged.

PW2, avers he then told **PW3** that accused is in possession of a stolen motor bike based on the way he was turning his head around and that they should collect same from him but **PW3** said they should wait until they hear of a theft case involving a motorbike.

PW2, contends PW3 told him he knows accused and the father and even mentioned the name of the father as Kwadjo Awashie, he avers he then relaxed.

PW3, Akli Promise, corroborated the testimony of PW2, he stated further that, he met accused face-to-face pulling a Haojue motorbike at Teshie, Aflao. He says he together with PW2 saw accused pulling the bike and PW2, even told him they should collect the bike from accused but he, the latter rather asked for restraint since he knows both accused and the father and added that they should be on the look -out and anytime someone complains of a stolen motorbike then they can assist the person to arrest the accused.

PW4, NO. 54886, D/L/CPL Sualah Y. Kankamoah, relied on his witness statement and the Exhibits attached.

After the case of the prosecution, the Court based upon sections 173 and 174 of the criminal offences (Procedure) Act, 1960 (Act 30) asserted that the prosecution has made out a prima facie case against the accused person. Consequently, the Court ordered the accused person to enter into his defence.

THE CASE OF THE DEFENCE

The accused person in opening his defence testified himself, called no witness and tendered no exhibit in evidence. Accused told the Court that he is a farmer and resides at Gbedekope/Aflao.

He avers on the 28th of April, 2022 at about 03:00pm he was in his house when complainant and four other persons came and he could identify brother Sammy who asked him whether he knows the complainant. Accused avers brother Sammy then asked him to follow them to his Gym, that is Gym 44 and he obliged.

Accused continues that at the Gym brother Sammy told him that complainant has reported him to he Sammy that he Awashie has stolen the complainant's motorbike and it was Yao Akli who reported same alleging to have seen him on the bike. Accused says whilst there attending to the call, police officers suddenly came there attempting to arrest him but he managed to flee. Accused contends he was once arrested and charged with robbery and the hell he went through before being acquitted and discharged at the High

Court, Ho only God knows and that he does not want to see anything of that sort again. He says he was once going to his father's house when these same police officers arrested him and he is now before this Court but he does not know anything about the theft.

The legal issue that emerges for determination is whether or not accused herein dishonestly appropriated the complainant's motor bike.

This being a criminal case, the prosecution bears the burden of proof to establish the guilt of the accused person beyond reasonable doubt as per section 11 (2) and 13 (1) of the Evidence Act, 1975 (NRCD 323) and also as was stated in the case of Bruce-Konuah vrs. The Republic (1967) GLR 611-617, where Amissah J.A. stated thus:

"Barring the well-known exceptions, an accused is under no obligation to prove his innocence. The burden of proof of the accused person's guilt is on the prosecution".

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 vrs. W.M.Q. Halm and Aryeh Kumi Crim. App Nos. 118/67 and 113/67, 7 August, 1967; (1969) CC155, the Court per Akufo Addo, C.J., Ollennu, Apaloo, Amissah J.J.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 Vrs. The Republic (1977) 1 GLR 351-359.

Throughout the trial, the accused person has denied committing the offence of stealing any motor both in his caution statement Exhibit "A" and charge statement Exhibit "C" given to the police on 02/05/2022.

PW2 and PW3, testified they saw accused pulling the motor and the way he was intermittently turning his head backwards and forth alone was suggestive to the fact that the motor being pulled should be a stolen motor.

The following ensued between Accused herein and PW3.

Q. Do you remember when you arrested and sent me to Gym 44 you told the members present that you saw a fat man pushing the motor towards the MTN pole and you followed him but could not reach him.

A. Members of Gym 44 and the owner arrested you before I came and they were questioning you and I told you I saw you with the motor and therefore you should produce same.

Q. You said you know me, have you ever seen me riding a motor before.

A. Yes, I have seen you riding a motor before.

Q. Do you remember you said to the Gym 44 members that you saw me arrested and you told the people present that you know me and so they should allow me to go with the motor bike.

A. I have said it already that you were arrested by the Gym members and the owner before my arrival and I told you before them that I saw you pulling the motor so go and bring same back.

Q. I put it to you that it is not true you saw me pushing any motor.

A. I saw you pushing the motor and it was a good Friday and I was not the only person who saw you.

Q. You said 2 of you saw me pushing the motor, why did you not arrest me instantly.

A. At the time we saw you, we had not had complaint of a stolen bike and it was afterwards that we got the information and I alerted you to bring it back to the owner.

Q. I put it to you that I do not know anything about the stolen motor bike.

A. You stole the motor.

In Ameshinu vrs: The Republic [2010] 34 MLRG 207 @ 215, the Court of Appeal per Apaloo J.A. held that:

“Where the identity is in issue, there can be no better proof of the identity than the evidence of a witness who swears to have seen the accused person committing

the offence charged.” Reference is also made to Regina vrs. Christie (1914) A C 545 per Viscount Haldane L.C.

Also, in Dogbe v. The Republic [1975] 1 GLR 118, the Court held that:

“In criminal trials, the identity of the accused as the person who committed the crime might be proved either by direct testimony or by circumstantial evidence of other relevant facts from which it might be inferred by the court. Thus, opportunity on the part of the accused to do the act and his knowledge of circumstances enabling it to be done were admissible to prove identity”.

PW2 and PW3 were clear and consistent in their testimony and I have no cause to doubt what they told the Court.

Upon a careful evaluation of the total evidence adduced before me and at the trial I am convinced of the guilt of accused person herein and he is accordingly convicted for stealing of the motor bike.

SENTENCING:

In sentencing the accused person, I take into consideration of that fact that he is a first-time offender. However, due to the frequent occurrences of motorbike theft and its attendant crimes, passing a deterrent sentence would be appropriate. In the circumstances, I hereby sentence the accused person herein to a term of four (4) years imprisonment in hard labour.

(SGD)

**H/H JOSEPH OFOSU BEHOME
CIRCUIT COURT JUDGE**