

**IN THE CIRCUIT COURT "A", TEMA, HELD ON THURSDAY,
THE 18TH DAY OF APRIL, 2023, BEFORE HER HONOUR
AGNES OPOKU-BARNIEH, CIRCUIT COURT JUDGE**

SUIT NO:

D4/09/20

THE REPUBLIC

VRS:

ERIC MENSAH

ACCUSED

PERSON

PRESENT

**C/INSP. SUSANA AKPEERE HOLDING THE BRIEF OF A.S.P.
STELLA NASUMONG FOR PROSECUTION PRESENT**

**PRINCE KWEKU HODO, ESQ. FOR THE ACCUSED PERSON
PRESENT**

RULING ON SUBMISSION OF NO CASE

FACTS:

The accused person was charged and arraigned before this court on 20th February, 2020 on a charge of Stealing contrary to **Section 124(1)** of Act 29.

The brief facts presented by the prosecution are that the complainant, Felix Appiah is a Tally Clerk and resides at community 2, Tema. The prosecution alleges that in the month of October, 2019, the complainant displayed his unregistered Hyundai Elantra vehicle with chassis number 5NPDH4AE6GH665672 for sale and the accused person called him with his MTN number 0244935713 and expressed interest in purchasing the vehicle and sent suspect Prince Adongo on 20th October, 2019 for the vehicle. The prosecution states further that the suspect after inspecting the

vehicle demanded for a test drive and in the course of the test drive he bolted with the vehicle. A report was lodged at the police station and both the accused and the suspect has been at large since 20th October, 2019 until 7th February, 2020 when accused was arrested at Ahwiaa in the Ashanti region.

THE PLEA

The accused person who is represented by counsel pleaded not guilty to the charge after it had been read and explained to him in the Twi language. Thereafter, the prosecution had a legal duty to prove the guilt of the accused person beyond reasonable doubt. At the trial, the prosecution called two witnesses. The first prosecution witness was Felix Appiah, the complainant and the second prosecution witness was D/ Sgt. Derrick Debrah, the Debrah, the investigator. The prosecution also tendered in evidence **Exhibit A**- the investigation caution statement of the accused person, **Exhibit B**, the charge statement of the accused person, **Exhibit "C"**- Vehicle Condition report and, **Exhibit "D"** series, photographs of the Hyundai Elentra vehicle. At the close of the case for the prosecution, Counsel for the accused person submitted that there is no case sufficiently made out to require the accused person to open his defence and filed a written submission of no case on 11th May, 2023.

Paragraph 21 of the Practice Direction (Disclosures and Case Management in Criminal Proceedings) states that:

“at the close of the case for the prosecution, the Court shall, on its own motion or on a Submission of No case to Answer, give a reasoned decision as to whether the Prosecution has or has not led sufficient evidence against the accused person”.

Accordingly, counsel for the accused having raised a submission of no case pursuant to **section 173** of the Criminal and Other Offences (Procedure) Act 1960, (Act 30,) the court is duty bound to evaluate the evidence led by the prosecution to determine if a case is sufficiently made out against the accused person to require him to open his defence.

THE LAW ON SUBMISSION OF NO CASE:

Section 173 of the Criminal Procedure Act, 1960 (Act 30) provides that:

"Where at the close of the evidence in support of the charge, it appears to the Court that a case is not made out against the accused sufficiently to require him to make a defence, the Court shall, as to that particular charge, acquit him."

In the oft-cited case of **State v. Ali Kassena (1962) GLR 144-154**, the Supreme Court laid down the principles governing a submission of no case. The Supreme Court stated that a submission that there is no case to answer might properly be made and upheld:

- (a) When there has been no evidence to prove an essential element in the alleged offence;*
- (b) When the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict upon it*

In the same case of **Sarpong v. The Republic** [1981] GLR 790 the court held in its holding 1 that:

"the law enjoined a trial judge to hold that no prima facie case had been made and that the accused was entitled to be acquitted and discharged if at the close of the prosecution's case, no sufficient evidence had been adduced to prove beyond all reasonable doubt, the charge laid against the accused; and it was wrong in law for the

trial judge to ignore that legal duty and instead call upon the appellant to enter his defence.”

The current position of the law is that the standard of proof at the close of the case for the prosecution is a prima facie case as opposed to beyond reasonable doubt which can only be arrived at after evaluating the evidence led by both the prosecution and the defence. See the case of **Kwabena Amaning Alias Tagor and Anor. v. The Republic** (200) 23 MRLG 78. Additionally, where the court overrules a submission of no case on grounds that a prima facie case is made out against the accused person and calls upon the accused person to open his defence but he refuses to offer any defence, he can properly be convicted upon the evidence led by the prosecution at this stage. See the case of **Armah v. The State [1961] G.L.R.** 136 at p. 141.

The elements of a submission of no case are discussed in the light of the evidence led in support of the ingredients of the offence to determine if at the close of the case of the prosecution, a prima facie case is made out to call on the accused person to open his defence.

ANALYSIS

Here, the accused person is charged with Stealing contrary to **section 124(1)** of the Criminal Offences Act, 1960(Act 29). Stealing is defined under **section 125** of Act 29 as follows:

“A person steals who dishonestly appropriates a thing of which that person is not the owner”

In the case of **Cobbina v. The Republic** (J3 7 of 2019) [2020] GHASC 4 (19th February 2020), the Supreme Court stated that the

essential ingredients of the crime of stealing which the prosecution must prove beyond reasonable doubt, are;

1. The subject matter of the theft must belong to another person.
2. The accused person must appropriate it.
3. The appropriation must be dishonest

To prove that the accused person dishonestly appropriated the vehicle in issue. The first prosecution witness (PW1), Felix Appiah testified that he is a Tally Clerk at Global Shipping Agency, in Tema. He further testified that his elder brother by name Bernard Rockson who is domiciled in Canada shipped a Hyundai Elantra with chassis number 5NPDH4AE6GH665672 to him in Ghana which he offered for sale. As a result, he displayed his phone number with the inscription "*for sale*" on the vehicle. According to him, on 19th October, 2019 at about 7:00am, the user of Vodafone phone number 0208498565 called him and expressed interest in buying the car. Consequently, he arranged with the caller to meet him at Community 5, Tema. Pursuant to that arrangement, on 20th October, 2019 at about 6:15, he met the caller at Community 5, Tema for a test drive within Community 5. After test driving the vehicle for a while, the suspect asked that they change location to enable him assess the vehicle well and proposed Community 3, Tema and based on that request, they drove the vehicle to Community 3, Tema. PW1 further testified that a few meters from the Maritime Hospital, the suspect asked him to stop the car for him to check an unusual sound he had detected from the car. When he stopped the vehicle, they both alighted and whilst he knelt down to check the alleged unusual sound, the suspect suddenly passed behind him, sat in the car and drove off to an unknown destination. According to him, all efforts made to trace the vehicle have failed based on which he reported the matter at the police station. The

witness estimated the value of the vehicle to be Forty-Eight Thousand Ghana Cedis (GH¢48,000).

PW1 under intense cross-examination by counsel for the accused person on the identity of the person who allegedly stole the vehicle from him during a test drive, the following ensued;

Q: On 19th October, 2019, did you come across the accused person.

A: No my Lord.

Q: The person you claimed snatched your car from you is not the accused person.

A: No my Lord.

Q: And this accused person had not seen you before until he was arrested and the person who snatched your vehicle was not the accused person.

A: My Lord, it was not the accused person who snatched my car but the number that called me was his number.

Q: Granted that his number called you on 27th October, 2019, your car had already been snatched from you.

A: Yes, My Lord. It was one week after my car was snatched that the number called me that I should bring GH¢5,000 and if I will not get, I should bring GH¢1,000 and that he was at a hotel and the car was with him.

Q: Assuming without admitting that there was communication between you and the accused, do you have evidence of this communication.?

A: No My Lord, but the itenised bill from MTN shows that he called and I did not answer. When he called me again the investigator was present and another person called Okyere who is a civilian.

Again, PW1 answered as follows under cross-examination;

Q: You will agree with me that until Prince Adongo is arrested, the transaction between you and Prince Adongo cannot be determined.

A: That is correct but after snatching of my vehicle, the number that called me and the conversation proves that, the person knows the whereabouts of my vehicle.

Q: So in short, you are telling the court that the number that called you must have stolen the car?

A: No My Lord, the number that called me was not the one who stole the car but rather demanded money for the car to be brought that is why I am interested in the car.

The answers given by the first prosecution witness shows that the accused person was not the one who allegedly snatched the car from him but according to him, the accused person knows the whereabouts of the person because after about a week after the car had been snatched from him, the phone number that called demanding money to help him locate the vehicle was that of the accused person.

The second prosecution witness (PW2), the investigator, **No. 41073 D. Sgt. Derrick Debrah**, whose investigations should assist the court in determining the charge against the accused person testified that on 20th November, 2019, a case of stealing of an unregistered Hyundai Elantra vehicle was reported by the complainant against the accused person and one Prince Adongo which was referred to him for investigation. According to him, after receipt of the complaint, he wrote letters to various agencies and departments to assist in impounding the vehicle and arresting its occupants. During investigations, PW1 provided an MTN number 0552476187 as one of the numbers that called him to demand for

monies to direct him to the location of the stolen vehicle and investigations revealed that the accused person, who is resident at Ahwiaa in the Ashanti Region is the owner of the said phone number. Based on that, on 8th February, 2021 the accused person was arrested and after investigations, he was charged with the offence of stealing and arraigned before the court. He tendered in evidence the investigation caution statement and charge caution statement of the accused which were admitted and marked as **Exhibit "A"** and **"B"** respectively. He also tendered the documents covering the alleged stolen Hyundai Elantra vehicle which was admitted and marked as **Exhibit "C"** and photographs of the vehicle, taken before it was allegedly stolen as **Exhibit "D" Series**.

The accused person in cross-examining PW2, the following ensued;

Q: Why did you effect my arrest.

A: My Lord, I arrested the accused person because his MTN number was seen on call data record of the complainant which the complainant claimed that it was the number that called and demanded money from him when his vehicle was stolen.

Q: Did the complainant tell you to arrest me because I have demanded for money from him.?

Q: My Lord, the complainant provided the number without knowing who was using the number. He was arrested through investigations at Ahwiaa in the Ashanti Region as the owner of the said number provided by the complainant.

A: I am putting it to you that I was not the one who called the complainant with my number but it was a certain lady who came for my phone and used it to call the complainant.

A: My Lord, the number is his number with his name and other identities of him. When he later informed me that somebody used

his number to place the call to the complainant, I required him to make the person who used the number available to ascertain whether what he is telling the court is the truth or not. My Lord, up till now the accused person has not made that person available for cross check.

Q: I am putting it to you that the said lady only told me that she wants to use my phone to call the complainant to demand for her goods which are in his possession and I have given all that evidence to my Lawyer.

A: My Lord, I do not have any evidence to that.

Q: I put it to that I am not the one who called the complainant. It was the lady who used the phone to call the complainant demanding goods which are in her possession.

A: My Lord, I have no evidence.

The accused person in his caution statement **Exhibit "A"** vehemently denied stealing the vehicle and stated that he is a barber at Ahwiaa in Kumasi and due to the nature of his work, many young men come to his shop and that some normally use his phone. He further states that a young man called Oscar usually comes to his shop to use his phone to chat with people and he never knew he was using it to commit crime. According to him, when the police came to effect his arrest for stealing a car in Tema, he informed them that he knew nothing about the case and that he suspects that it is the said Oscar who stole the car because he is a fraudster and uses his, (accused person's) phone most of the time. According to him, whenever the said Oscar chats on his phone, he deletes the messages and he noticed that he used it to demand money from PW1 per the chats.

From the evidence led by the prosecution, the prosecution witnesses agree with the contention of the defence that it was not the accused person who allegedly stole the vehicle from PW1 in Tema. What the accused person is alleged to have done was to have called the complainant almost a week after the alleged theft in Tema that he knew the location of the vehicle and demanded money to assist PW1 to find the vehicle. Assuming the truth of all that the prosecution witnesses testified to; can it be said that the accused person dishonestly appropriates a vehicle for which he is not the owner for which reason he must be called upon to open his defence to give his side of the story? I will answer in the negative. From the evidence led by the prosecution, it is one Prince Adongo who called PW1 to express interest in buying the vehicle and he, under the pretext of test driving, allegedly stole the vehicle from PW1. The prosecution has not linked the accused person in any way to the said Prince Adongo. Assuming, arguendo that the accused person called PW1 with his phone number a week after the alleged incident to demand money to assist him locate the alleged stolen vehicle, this information should have been the foundation of police investigations to unravel the mystery surrounding the alleged theft but not prematurely truncating investigations and charging the accused person who they have all confirmed before the court as not being the perpetrator of the alleged theft before the court. A careful investigation into the matter would have clearly revealed if the accused person is in any way complicit in the alleged crime and the appropriate charge to prefer against him. In the case of **Mali v. The State** [1965] GLR 710 SC, the court held that if at the close of the case of the prosecution the court requires further evidence before it can decide on the issues raised in the case of the prosecution, the irresistible conclusion is that the prosecution has failed and the accused should be acquitted. In the instant case, the court requires further evidence from prosecution to fill in the gaps so that if the accused person elects not to open

his defence the evidence led so far will suffice to convict him. The prosecution has therefore woefully failed to prove the essential ingredients of a charge of stealing against the accused person and the evidence led by the prosecution is so manifestly unreliable and so discredited as a result of cross-examination that no reasonable court could safely convict upon it.

On the totality of the evidence led by the prosecution in support of the charge of stealing, I hold that the prosecution failed to make a prima facie case of stealing against the accused person to warrant calling upon him to open his defence. The submission of no case is accordingly upheld. The accused person is acquitted and discharged.

**BARNIEH
JUDGE)**

**H/H AGNES OPOKU-
(CIRCUIT COURT**