

**IN THE DISTRICT COURT '1' AT CAPE COAST ON FRIDAY THE 14TH OF
FEBRUARY 2023 BEFORE HIS HONOUR JAMES K. BOTAH ESQ. SITTING
AS AN ADDITIONAL MAGISTRATE**

CC NO. 31/2023

THE REPUBLIC

VRS

FELIX KWOFIE

-ACCUSED

Accused

-Present

Complainant

-Present

Sgt. Emmanuel Arthur for Prosecution -Present

JUDGMENT

On 27th September 2022 the accused person herein was arraigned before this court charged with three (3) Counts of Causing Unlawful Damage contrary to section 172 (1) (a) of the Criminal and Other Offences Acts 1960 (Act 29); Being on premises for unlawful Purposes contrary to section 155 of Act 29 and Attempted Stealing contrary to sections 18 and 124 (1) of Act 29.

The accused pleaded not guilty to the offences and was granted bail pending trial in the sum of GHC6,000.00 with one surety.

In proof of the charges against the accused, prosecution called three (3) witnesses namely; PW 1 Yusif Wala; PW 2 Joseph Abekah and PW 3 D/Insp. Ernest Amewu. PW 1 informed the court in his witness statement that on 10th September 2022 whilst he was on duty as a security officer at the Cape Coast High Court Complex at about 9:00 pm he saw the accused standing by a Jaguar Saloon Car

No. CR 1265-11 which was parked at the frontage of the court complex. According to PW 1, the accused opened the bonnet and trunk of the car. He searched in the trunk of the car but found nothing. The accused then went to the driver's side of the car and broke the glass with his hand and entered the car. PW 1 said with the help of PW 2 they were able to arrest the accused and then took him to the Metro Police Station and then lodged a complaint. PW 2 confirmed that he helped PW 1 to arrest the accused.

PW 3 investigated the case and obtained an investigation cautioned statement and a charged statement from the accused.

The accused has denied all the charges preferred against him by the prosecution. The accused testified that he was passing in front of the court's building when he saw the Jaguar saloon car parked in front of the court. He observed that the car was a nice car and told himself that he will buy a similar car in future. According to the accused, he then overheard someone calling him from within the court house. Accused said that the person i.e PW 1 came from the court house and then held him alleging that he has stolen something from the car. According to accused, PW 2 helped PW 1 to arrest him and then he was taken to the police station.

Section 155 of Act 29 provides as follows:

" Whoever is found in or about any market, wharf, jetty, or landing place, or in about any vessel, verandah outhouse, building, premises, passage, gateway, yard, garden or enclosed piece of land, for any unlawful purpose, shall be guilty of a misdemeanor."

The element of the offence is that the accused should be in the particular place for an unlawful purpose.

In the case of Amoah v. The State [1966] GLR 737 CA it was held by the court of Appeal that the essence of the charge is that the presence of the accused on the land or place must be for an unlawful purpose. Therefore, where there is evidence that the presence of the accused was for a lawful purpose, the offence is not made out.

From the evidence on record, I find that on 10th September 2022 at between 9:00 pm to 9:30 pm the accused was at the frontage of the Cape Coast High Court Complex building. He claims he was using the narrow foot path between the Anglican Church and the Court's House to the sea beach closed to the Cape Coast Castle. If what the accused is saying is truthful why did he not use the street in front of the Anglican Church leading to the Cape Coast Castle to the beach? Per his own evidence, he stopped to admire the car. However, PW 1 who was on night duty as a security man at the court house saw the accused open the bonnet and trunk of the car.

PW 1 also saw the accused break the driver side window of the car and then entered the car. I find evidence in support of count 2 of the charge sheet. The accused is accordingly convicted on count 2.

In respect of Count 1 of the Charge Sheet, section 172 (1) (a) of Act 29 provides as follows:

"Whoever intentionally and unlawfully causes damage to any property by any means whatsoever-

- (a) *to a value not exceeding C1 million, or no peculiar value, shall be guilty of a misdemeanor;"*

The element of the offence is that the accused unlawfully and intentionally caused damage to property.

In Asante v. The Republic [1972] 2 GLR 177 the court held that the prosecution has a burden to establish that the accused intentionally and unlawfully caused the damage complained of.

There is evidence on record that the accused used his hand to strike the driver's side window of the car thus damaging the glass in the process. His intention was to break the glass and then gain access into the car. Accordingly, I find accused guilty on Count 1 and hereby convict him.

Section 18 of Act 29 provides:

"A person who attempts to commit a crime by any means shall not be acquitted on the ground that, by reason of the imperfection or other condition of the means, or by reason of the circumstances under which they are used, or by reason of any circumstances affecting the person against whom, or the thing in respect of which the crime is intended to be committed or by reason of the absence of that person or thing, the crime could not be committed according to his intent."

The simple understanding of this provision is that if you attempt to commit an offence and you do not succeed, you have attempted to commit the said offence.

In The Republic v. Darko [1971] 2 GLR 227, the accused person attempted to shoot and kill the complainant but the gun failed to fire. The court held that the act of the accused was an attempted murder.

Section 124 (1) of Act 29 also provides as follows:

"Whoever steals shall be guilty of a second degree felony."

Section 125 of Act 29 defines stealing as:

"A person steals if he dishonestly appropriate a thing of which he is not the owner."

The case of Ampah v. The Republic [1977] 2 GLR 171 stated the elements of the offence of stealing as:

- (1) Dishonesty
- (2) Appropriation; and
- (3) Property belonging to another.

There is evidence to support the charge that on the day in question the accused entered the car and attempted to steal either the car or its parts. I don't believe the accused person's defence that he never entered the car with the intention to steal same or its parts. The timely intervention of PW 1 and later PW 2 stopped the accused in succeeding in his act of attempted stealing. The evidence points to the guilt of the accused on Count 3. I therefore convict him.

BY COURT: What do you have to say before sentence is imposed on you?

ACCUSED: I plead for leniency.

PROSECUTION: The accused is not known.

BY COURT: In respect of Count 1 and 2, the accused is sentenced to serve two (2) months I.H.L. In respect of Count 3, the accused is sentenced to serve six (6) months I.H.L. The sentences are to run concurrently.

**JAMES KOJOH BOTAH ESQ.
(CIRCUIT COURT JUDGE)**

