

**IN THE CIRCUIT COURT OF GHANA HELD AT CIRCUIT COURT '2', ACCRA ON
TUESDAY, 9TH APRIL, 2024 BEFORE HIS HONOUR ISAAC ADDO, THE CIRCUIT
COURT JUDGE**

CASE NO: D4/29/2023

THE REPUBLIC

VRS

CYRIL KOBINA

ACCUSED PERSON PRESENT

CHIEF INSPECTOR JONAS LAWER FOR THE REPUBLIC PRESENT

BAFFOUR ASARE KORANG, ESQ. FOR THE ACCUSED PERSON PRESENT

**RULING ON A SUBMISSION OF NO CASE TO ANSWER FILED BY THE DEFENCE
COUNSEL ON BEHALF OF THE ACCUSED PERSON**

The Accused person through his counsel has invited this Court to uphold his Submission of No Case to Answer and consequently acquit and discharge him. The Accused person was first arraigned before this Court on the 12th October, 2022, charged with the following offences contrary to sections 124(1) and 172(1) of the Criminal Offences Act, 1960 (Act 29):

- i. Stealing, and
- ii. Causing Unlawful Damage.

The Accused person pleaded Not Guilty to the charges when same were read and explained to him.

THE FACTS OF THE CASE

Both the Complainant and the Accused person are businessmen. On the 18th July, 2016, the Complainant reported to the Police that in the year 2013, he borrowed GH¢30,000.00 from the Accused person and used his Man Diesel Tipper Truck with registration number GE 3813-13 as a collateral. That he could not trace the Accused person to pay back the money and collect his vehicle. The said Tipper Truck was traced to Tarkwa and impounded at the Tarkwa Divisional Police Headquarters. The Accused person was later invited to the Police Station. The Accused person also stated that the Complainant had refused to pay back the loan in spite of the persistent efforts to collect it. The Accused person also insisted that not until the complainant pay back the loan, he would not release the Tipper Truck to him. The Accused person was later admitted to bail. Thereafter, the Accused person went and collected the Tipper Truck and refused to bring it to Accra. In the year 2019, Police visited the house with a mechanic to inspect the vehicle and found the underlisted parts of the vehicle damaged: Air filter, Air Horn, Air Horn Motor, Front Spring, Back Spring, N-165 Battery, Back Rim, Tyres 22.5 and 420 complete engine all valued GH¢151,800.00. The Accused person later sold the Tipper Truck without the consent of the Complainant.

At the trial, the prosecution called two (2) witnesses, i.e. the Complainant and the Investigator.

The testimony of PW1, the Complainant (Robert Akeyom) confirmed the facts as presented by the prosecution.

PW2 (Detective Chief Inspector Michael Kwashie Akporhor) investigated the case. PW2 tendered in evidence, the Cautioned and Charge Statements of the Accused person, two (2) Invoices and Photographs of the Tipper Truck.

The prosecution called two (2) witnesses namely the complainant and the investigator. The testimony of PW1 (Fatima Zara Ali) is a rehash of the facts of the case presented by the prosecution. PW1 tendered in evidence photographs showing the vehicle as well as documents covering the vehicle.

PW2 (No. 55062 Detective Lance Corporal Samuel Obeng) investigated the case. PW2 tendered in evidence the Cautioned and Charge Statements of the Accused person without any objection.

At the close of the case of the prosecution, the defence counsel filed a Written Submission of No Case to Answer on behalf of the Accused person. The defence counsel submitted that the prosecution has not made out a prima case against the Accused person and so the Accused person should be acquitted and discharged.

At this stage, this Court is enjoined by law to determine whether or not the prosecution has established a prima facie case against the Accused person. Sections 173 and 174(1) of the Criminal Offences (Procedure) Act, 1960 (Act 30) provides:

“173 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 the accused to make a defence, the Court shall, as to that particular charge, acquit the accused.

174(1) *At the close of the evidence in support of the charge, if it appears to the Court that a case is made out against the accused sufficiently to require the accused to make a defence, the Court shall call on the accused to make the defence and shall remind the accused of the charge and inform the accused of the right of the accused to give evidence personally on oath or to make a statement."*

Also, the Practice Directions (Disclosures and Case Management in Criminal Proceedings) dated 30th October, 2018 states at section 5(2)(a):

"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 as to require the Accused person to open his defence."

In the case of Michael Asamoah & Another vrs The Republic [2017] DLSC 2628 @ page 4, the Supreme Court speaking through Adinyira JSC stated the law on submission of no case as follows:

"The grounds upon which a trial court may uphold a submission of no case as enunciated in many landmark cases whether under a summary trial or trial on indictment may be restated as follows:

- a. *There had been no evidence to prove an essential element in the crime;*
- b. *The evidence adduced by the prosecution had been so discredited as a result of cross-examination; or*
- c. *The evidence was so manifestly unreliable that no reasonable tribunal could safely convict upon it;*
- d. *The evidence was evenly balanced in the sense that it was susceptible to two likely explanations, one consistent with guilt and one with innocence. See also the cases of Tsatsu*

Tsikata v. The Republic [2003-2004] SCGLR 1068; Affail v. The Republic [1975] 2 GLR 69; Apaloo and Others v The Republic [1975] 1 GLR 156-192; State v. Ali Kassena [1962] 1 G.L.R. 144, S.C."

In the case of Bruce-Konuah vrs The Republic [1967] GLR 611 – 617, Amissah J.A. stated as follows:

"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."

THE LAW AND EVALUATION OF EVIDENCE

COUNT ONE (1) - STEALING

Stealing is defined at Section 125 of Act 29 as follows:

"A person steals who dishonestly appropriates a thing of which that person is not the owner".

The definition of stealing therefore requires the prosecution to prove the essential elements of the offence. In the case of The State vrs 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 vrs The Republic [1977] 1 GLR 351-359 at holding 2.

It is not in dispute that the tipper truck belonged to the complainant and he used same as a collateral when he contracted a loan, the sum of GH¢30,000.00 from the Accused person. This is by virtue of Exhibit 'C', i.e. an Undertaking. For the avoidance of doubt, I reproduce the content as follows:

“UNDERTAKING

DATE: 15/4/2013

***..... I, ROBERT AKEYOM of NAVOO ENTERPRISE borrowed an amount of GH¢10,000.00 GH Cedis from Mr. CYRIL Kobina which is going to be paid in a month. 16% interest will be charged monthly on the principal amount. I therefore used my DONGENG TIPPER TRUCK as a collateral. Additional (20,000) Ghana was added on 23/4/2013*”**

The PARTICULARS OF OFFENCE for the offence of Stealing, i.e. COUNT ONE (1) contained in the Charge Sheet that invoked the jurisdiction of this Court reads:

“CYRIL KOBINA, BUSINESSMAN, AGED; 37 YEARS: You during the year, 2013 at 37 in the Greater Accra Region and within the jurisdiction of this court, you stole Man Diesel Tipper Truck with registration number GE 3813-13 valued GH¢380,000.00 the property of one Robert Akeyom.” (Emphasis mine)

Also, not in dispute is the fact that the Accused person defaulted until in 2015 that he alleged he got the money. The following is what the Complainant told the Court per paragraph 9 of his Witness Statement:

“In 2015, I had the money and called the accused on phone, he picked the call and promised to call back but he refused. From then, the accused refused to pick my calls and when I used a different

line to call, he would pick the call and the moment he recognized my voice he would hang up the line or refuse to talk to me."

Even as at March, 2020, the truck had not been disposed off or had not been dishonestly appropriated allegedly. Going by the evidence of the Complainant, it means that in 2013, the Accused person was lawfully in possession of the tipper truck with the consent of the Complainant when the former used same as a collateral for a loan contracted from the Accused person.

Section 122 (2)(3) of Act 29 defines Appropriation as follows:

(2) 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 a person may be deprived of the benefit of the ownership of that thing, or of the benefit of the right or interest in the thing, or in its value or proceeds, or part of that thing.

(3) An intent to deprive can be constituted by an intent to appropriate the thing temporarily or for a particular use, if the intent is so to use or deal with the thing that it probably will be destroyed, or become useless or greatly injured or depreciated, or to restore it to the owner only by way of sale or exchange, or for reward, or in substitution for another thing to which that owner is otherwise entitled, or if it is pledged or pawned.

Section 120(1) of Act 29 defines dishonest appropriation as follows:

"An appropriation of a thing is dishonest (a) *if it is made with an intent to defraud, or* (b) *if it is made by a person without a claim of right, and with a knowledge or belief that the appropriation is without the*

consent of a person for whom that person is trustee or who is owner of the thing or that the appropriation would, if known to the other person, be without the consent of the other person".

In the case of *Salifu v. The Republic* [1974] 2 GLR 291, Ata-Bedu J stated:

"There is no doubt that the crucial ingredient or element in a charge of stealing is dishonest appropriation."

It is the Complainant's evidence that he made a report to the Madina Police in 2016. In the Evidence-In-Chief of PW2 (the investigator), he told the Court that the Complainant lodged the complaint with the Madina Police on the 18th July, 2016. Granted that the Accused person received the money (30,000.00 at 16%) from 23/4/2013, why did he not hand over the money to the police when he lodged the complaint in 2016? More so, the Complainant knew the Accused person worked at DVLA Office, Accra but did not make any effort to go and look for him out there. As at 6th September, 2023 when the Complainant was cross examined by the defence counsel, he had not paid even part of the money to the Accused person. By a simple calculation, as at September, 2023, the Complainant was indebted to the Accused person to the sum of over GH¢400,000.00. See excerpts of cross examination of PW1 (Complainant) on the 6th September, 2023:

Q. In total as at 23/4/2013, you had borrowed from Accused the sum of GH¢30,000 and freely given a tipper truck for the loan at an agreed interest of 16% per month?

A. Yes, My Lord.

Q. What is today's date?

A. 6/9/2023.

Q. You have not paid that principal plus interest since 23/4/2013, not so?

A. Yes, My Lord because when the money was ready to pay to the Accused person, the Accused person already disappeared with the tipper truck and sent it to Tarkoradi and

the truck was working, and making money out of that. So when we did not find him, I made a report to Madina Police and he was traced and arrested.

Q. Do you have the principal plus interest from 2013 on you right now?

A. No, My Lord because when I was ready to pay the money with interest to the Accused person, the Accused person had already taken the law into his own hands by sending the truck to Tarkoradi to work with it.

Q. Presently, you owe the Accused person GH¢30,000 plus 16% interest per month to date, not so?

A. No, My Lord. Because if I had found the truck at the time in 2015, I would have paid him all his moneys to him. I had by then done some work, and I was paid money.

Q. It is your evidence that you got to know Accused person through one Gideon, not so?

A. Yes, My Lord.

Q. Where was Gideon working when he introduced you to Accused person?

A. Licence Office, he told me.

Q. At the time, did the Accused person tell you where he also worked?

A. He told me he worked at Licence Office.

Q. So, at all material times, from 2013 to date, you knew the Accused worked at DVLA, not so?

A. After some time, I wasn't getting him on phone and I did not see him too.

Q. You know where the Accused person works, if the money was ready you could have gone to the DVLA office to look for him to pay the money?

A. Not true because Gideon introduced Accused person to me.

Q. You now know Gideon did you request to meet the Accused person through Gideon?

A. No, My Lord. I only have to go to the Accused person with my niece. (Emphasis mine)

It therefore stands to reason that in the year, 2013, the Accused person could not have dishonestly appropriated the tipper truck. At the time, he was in lawful possession of the tipper truck which had been collateralized. The Accused person therefore had an equitable interest in the asset in the year, 2013.

COUNT TWO (2) – CAUSING UNLAWFUL DAMAGE

Section 172 (1)(b) of Act 29 provides:

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

—

(b) to a value exceeding One Hundred Cedis, shall be guilty of second degree felony.”

From the above, the elements of causing unlawful damage are as follows:

- i. That the accused person intentionally caused damage to the property, and
- ii. The accused person unlawfully caused the damage.

It must be proved that the unlawful damage was caused by the accused person intentionally. Evidence that the damage was caused accidentally or negligently will not suffice.

From the evidence adduced, it has not been established by the prosecution that it was the Accused person who caused damage to the tipper truck. The PARTICULARS OF OFFENCE for COUNT TWO (2) reads:

“CYRIL KOBINA, BUSINESSMAN, AGED: 37 YEARS: You during the year, 2013 at 37 in the Greater Accra Region and within the jurisdiction of this court, you intentionally and unlawfully caused damage to air filter valued GH¢300.00, Air horn valued GH¢80.00, Air horn motor valued GH¢50.00, front spring valued GH¢2,000.00, Back Spring valued GH¢2,900.00, N-165 Battery valued GH¢850.00, Back rim valued GH¢1,100.00, Tyres 22.5 valued GH¢1,850.00 and 420 complete Tipper Truck Engine valued GH¢151,800 and all to the total value of GH¢160,920.00, the property of one Robert Akeyom.”

In a case where the prosecution proves the ingredients of the offence of causing unlawful damage, that is, intention and unlawful damage, the accused person would be required to offer an explanation to the charge for the Court to determine whether or not the conduct of accused person was done in good faith, including where the accused person asserts a claim of right to the property. See Yeboah & Anor vrs The Republic [1999-2000] 1 GLR 137.

Has the prosecution proved that the accused person intentionally and unlawfully caused damage to the tipper truck? In the Evidence-In-Chief of the Complainant (PW1), it was only at paragraphs 18 and 22 of his Witness Statement that he talked about damage to the tipper truck. The following is what he told the Court:

“18. In March, 2020, the investigator called me that the lawyer of the accused is calling us to when the truck is impounded, so myself and two investigators met the accused and his lawyer at East Legon and went to Community 18, Tema and we saw the vehicle parked in a certain yard. But the

truck was completely damaged. The accused and his Lawyer begged me in the presence of the investigator.

22. In July, 2021, myself, the accused, the investigator and mechanic went to the yard and the truck was assessed by the mechanic. According to the mechanic, the following parts of the vehicle were damaged:

	AMOUNT (GHC)
i. Air Horn	300.00
ii. One Air Horn Motor	50.00
iii. Two Front Spring Asyl	4,000.00
iv. Two Back Spring Asyl	5,800.00
v. Two N-165 Battery	1,920.00
vi. Eight Back rim	8,800.00
vii. Ten Tyres (22.5)	18,500.00
viii. One 420 complete engine	151,800.00"

The Complainant in his evidence did not mention the Accused person as the one who caused damage to the tipper truck. The Complainant only said that when the truck was impounded and assessed, the above-mentioned parts were seen to be damaged. The Court finds that the prosecution has failed to make a prima facie case against the Accused person. It would therefore be erroneous to call upon the Accused person to enter into his defence. In the circumstances, the Accused person herein, CYRIL KOBINA is hereby acquitted and discharged.

(SGD.) H/H ISAAC ADDO

CIRCUIT COURT JUDGE

9TH APRIL, 2024

