

**IN THE DISTRICT COURT 2, TAMALE
HELD ON FRIDAY 4TH NOVEMBER, 2022
BEFORE HIS WORSHIP D. ANNAN ESQ.**

SUIT NO. B7/26/22

THE REPUBLIC

V

ABDUL WAHAB ABUBAKAR

JUDGMENT

1. In this case, accused is charged with the following offences:

COUNT ONE

STATEMENT OF OFFENCE

Stealing, contrary to section 124(1) of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

Abdul Wahab Abubakar, Mechanic, 22 years: For that you on the 7th day of July, 2022 at Fuo, Tamale in the Northern Magisterial District and within the jurisdiction of this Court, did steal a Loujia motorbike valued at GHS2,500.00 the property of Bertha Yahaya.

COUNT TWO

STATEMENT OF OFFENCE

Causing unlawful damage, contrary to section 172 of the Criminal Offences Act, 1960 (Act 29).

PARTICULARS OF OFFENCE

Abdul Wahab Abubakar, Mechanic, 22 years: For that you on the 7th day of July, 2022 at Fuo, Tamale in the Northern Magisterial District and within the jurisdiction of this Court, you intentionally and unlawfully caused damage to a motorbike valued at GHS2,500.00. the property of Bertha Yahaya.

FACTS OF THE CASE

2. The brief facts of the case as presented by prosecution are that the complainant, Bertha Yahaya, a businesswoman resident at Fuo, Tamale on 7/7/22 parked her Loujia motorbike with registration number NR 4362-13 in front of her house, but later realized that it was not there. Complainant then found the motorbike at a washing bay at the Stadium Roundabout, Tamale where it was being washed. She noticed that some parts had been removed. Prosecution adds that when complainant confronted that accused, accused indicated that he bought the motorbike at GHS650.00 from one Mohammed. Complainant was then assisted by one Staff Sergeant Akulabsi Stephen Jangdow of the Airforce Base, Tamale to arrest that accused to the police station. All efforts to trace the said Mohammed whom accused claimed sold the motorbike to him proved futile. After investigation, the accused was duly charged with the above offences and arraigned before this court.
3. The accused pleaded not guilty to the said offences.

DEFINITION OF THE OFFENCES

4. Section 125 of Act 29 defines stealing to mean, "a person steals if he dishonestly appropriates a thing of which he is not the owner." Act 29 also provides that whoever steals shall be guilty of a second degree felony, see s. 124(1).

5. Regarding unlawful damage, section 173 of Act 29 defines damage to include not only damage to the matter of a thing, but also an interruption in the use of that thing, or an interference with that thing by which the thing becomes permanently or temporarily useless, or by which expense is rendered necessary in order to render the thing fit for the purposes for which it was used or maintained. Section 172(1) of Act 29 provides that a person who intentionally and unlawfully causes damage to any property (a) to a value not exceeding one million cedis, or without a pecuniary value commits a misdemeanour, (b) to a value exceeding one million cedis commits a second degree felony.

BURDEN OF PROOF

6. It has been affirmed that the golden tread that runs through the web of our criminal jurisprudence is that the guilt of an accused person shall be proved beyond reasonable doubt. This required standard is codified under the 1992 Constitution and the Evidence Act, 1975 (NRCD 323).

7. Under the 1992 Constitution, article 19(2)(c) states that:

"A person charged with a criminal offence shall ... be presumed to be innocent until he is proved or has pleaded guilty."

8. Under both statute and at common law, the prosecution carries this burden of proof. The relevant requirements under the Evidence Act, 1975 (NRCD 323) are reproduced below:

S. 11(2) In a criminal action, the burden of producing evidence when it is on the Prosecution as to any fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of the fact beyond a reasonable doubt.

S. 13(1) In a civil or criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond reasonable doubt.

S. 22 In a criminal action, a presumption operates against the accused as to a fact which is essential to guilt only if the existence of the basic facts that give rise to the presumption are found or otherwise established beyond a reasonable doubt, and thereupon, in the case of a rebuttable presumption, the accused need only raise a reasonable doubt as to the existence of the presumed fact.

9. The common law position was stated by Denning J, (as he then was), in **Miller v Minister Of Pensions [1947] 2 ALL ER 372 at 374** that:

“Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it permitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence of course it is possible, but not in the least probable; the case is proved beyond reasonable doubt, but nothing short of that will suffice.”

10. Whereas the prosecution carries the burden of proving the guilt of the accused beyond reasonable doubt, the accused carries no such burden of proving his innocence. At best, he has to raise a doubt in the case of the prosecution. This settled rule is that the doubt ought to be reasonable and not fanciful, see the case **COP v Isaac Antwi [1961] GLR 408**.

11. In assessing the evidence of the prosecution, therefore, the Court would have to apply what is known as the three-tier test to each of the element of crime. This was amply stated in **The Republic v Francis Ike Uyanwune [2013] 58 GMJ 162, CA**, per Dennis Adjei, JA:

"The law is that the prosecution must prove all the ingredients of the offence charged in accordance with the standard burden of proof; that is to say the prosecution must establish a prima facie case and the burden of proof would be shifted to the accused person to open his defence and in so doing he may run a risk of non-production of evidence and/or non-persuasion to the required degree of belief else he may be convicted of the offence. The accused person must give evidence if a prima facie case is established else he may be convicted and if he opens his defence, the Court is required to satisfy itself that the explanation of the accused person is either acceptable or not. If it is acceptable, the accused should be acquitted and if it is not acceptable, the Court should probe further to see if it is reasonably probable. If it is reasonably probable, the accused person should be acquitted, but if it is not and the Court is satisfied that in considering the entire evidence on record the accused person is guilty of the offence, the Court must convict him. This test is usually referred to as the three-tier test."

METHODOLOGY

12. In the instant case, accused pleaded not guilty to the charges herein. Upon such a plea, the prosecution must prove the whole of its case including the identity and knowledge of offence(s) against the accused. The prosecution in evidence called three witnesses: Akulabsi Stephen Jangdow (PW1), complainant Bertha Yahaya (PW2) and No. 54021 D/L/Cpl. Michel Kuwornu (PW3). Prosecution also tendered in evidence the following exhibits: Exhibit A, the investigating cautioned statement, Exhibit B, the charge cautioned statement and Exhibits C and C1, pictures of the motorbike.

The Prosecution's Case

13. According to the PW1, Akulabsi Stephen Jangdow, the complainant, his cousin, informed him on 7/7/22 that her motorbike was missing. They then rushed to town in search of it and later saw it at a washing bay at Stadium Roundabout where the accused was waiting for it to be washed. He added that the cover and other essential parts of motorbike had been dismantled in an attempt to make it unidentifiable. He then arrested that accused to prevent him from escaping and lynching and then called the mobile police who took the accused to the Sagnarigu Police Station.

14. PW2, Bertha Yahaya, the complainant testified that on 7/7/22 at about 11:00am her Loujia motorbike with registration number NR 4362-13 was stolen. She earlier searched through the neighbourhood but could not find it. She later contacted her cousin, PW1, to join the search which they found the said motorbike parked at the Stadium Roundabout. She added that she checked it and realized that it was her motorbike but the cover and seat had been removed. When she asked who brought the motorbike to be washed, the accused was pointed out. She further stated that when accused was asked where he got the motorbike from, accused informed her that

he bought it from someone. Accused was then arrested and arraigned before this court.

15. PW3, No. 54021 D/L/Cpl. Michel Kuwornu stated in his witness statement that the case was referred to him for investigation. Upon interrogation, accused informed him that he bought the said motorbike from one Mohammed at GHS650.00. He added that efforts to get the said Mohammed yielded no result. He tendered in evidence Exhibits A, B, C and C1.

16. At the end of the Prosecution's case, the Court found that a prima facie case had been established against accused and therefore called upon accused to open his defence.

Accused Person's Defence

17. Accused opted to give evidence from the dock. In his unsworn statement, he stated that when he was buying the motorbike he did know that it was stolen. If he had known, he wouldn't have purchased it. He added that he paid GHS650.00 for it and the one he bought it from, Mohammed has runaway. When he tried his phone, Mohammed doesn't pick. He did not call any witness.

ANALYSIS OF FACTS AND LAW

18. I shall first deal with the offence of stealing. In the case, **Brobbery & Ors v The Republic [1982-83] GLR 608**, the essential elements to be proved by prosecution were stated as (a) the person charged must have appropriated the thing allegedly stolen, (b) the appropriation must be dishonest and (c) the person charged must not be the owner of the thing allegedly stolen. Therefore, a person could not be guilty of stealing unless he was proved to have appropriated the thing in the first place. In explaining what dishonesty in stealing is, the court in **Anang v The Republic [1984-86] 1 GLR 458** stated that it '...connoted moral obloquy. ... there had to be an act of the accused of such a nature as to cast a slur on the character revealing him as a person lacking in integrity or as plainly dishonest person ...'. In **Ampah & Anor. v The Republic [1976] 1 GLR 403**, the court puts it simply as, ...(b) where the appropriation was made without a claim of right and without the consent of the owner...'

19. In the instant case, prosecution states that accused was found with the motorbike at the Stadium Roundabout. When accused was queried how he came about the said motorbike, accused stated that he bought it at GHS650.00 from one Mohammed. Prosecution contends that accused sent them on a loose end in finding the said Mohammed. This is when ensued PW3 was under cross-examination:

“Q: You just indicated that the accused said he bought the motorbike from someone, did accused show you any document indicating his purchase?

A: No.

Q: Did accused mention the name of the person he purchased it from?

A: Yes.

Q: What is the name?

A: Mohammed.

Q: Did you investigate into this Mohammed?

A: Yes.

Q: What did you find?

A: No trace of the person.

Q: Accused was not able to take you to the said Mohammed?

A: He took us there but it was a loose end."

20. The accused in his defence contends that he bought the motorbike from the said Mohammed. He added that he did not know that the motorbike was stolen. He, however, failed show any evidence that indeed he bought it from the said Mohammed or the said Mohammed is the one who rather stole the motorbike.

21. From the above, I find that the prosecution has been able to prove beyond reasonable doubt that (a) the accused appropriated the motorbike (b) he dishonestly appropriated the motorbike and (c) that he is not be the owner, and I so hold.

22. Regarding the offence of causing unlawful damage, the essential elements to be proved by the prosecution are intention and unlawful damage, see the case of **Yeboah & Anor. v The Republic [1999-2000] 1 GLR 149**. Acquah J. (as he then was) puts it succinctly in **Homenya v Republic [1992] 2 GLR 305** at page 312 that,

“Section 172(1) of Act 29 which creates the offence of unlawful damage requires that for a person to be liable under the said section, the accused must have *caused the damage intentionally and unlawfully*. The section reads: "whoever intentionally and unlawfully causes damage to any property by any means . . ." Each of the two words emphasised above is important and must be established before one can be called upon to open his defence in respect of this offence. For if the damage was intentionally but not unlawfully caused, the offence is not committed. Likewise if the damage was unlawfully but not intentionally caused, then it is not one of unlawful damage.”

23. From the evidence, the prosecution says that the cover and the seat of the motorbike had been dismantled in an attempt to make it unidentifiable. The accused in his defence did not dispute this. I, therefore, have no doubt in my mind that accused intentionally and unlawfully caused damage to the said motorbike in attempt to make it unidentifiable.

24. In effect, I hereby convict the accused person in the offence of stealing and causing unlawful damage, contrary to sections 124(1) and 172(1) of the Criminal Offences Act, 1960 (Act 29).

SENTENCING

25. Having heard the accused person and prosecution on pre-sentencing hearing, it is noted that the accused has compensated the complainant, Bertha Yahaya in the sum of GH1,000.00 for the damage to the motorbike. Complainant currently has custody of the said motorbike. I also note that stealing is prevalent within the Tamale metropolis. Lastly, I note the fact that accused is 22years of age and a first time offender. In effect, I hereby sentence the accused as follows:

- a. On count 1: Accused is fined 100pu (ie GHS1,200.00) and in default shall serve a jail term of four (4) months, IHL.
- b. On count 2: Accused is fined 100pu (ie GHS1,200.00) and in default shall serve a jail term of three (3) months, IHL.
- c. The sentences to run concurrently.

H/W D. ANNAN ESQ.

[MAGISTRATE]

ACCUSED APPEARED IN PERSON

SGT. IGNATIUS ATIREKPERE FOR THE REPUBLIC

References:

1. *Article 19(2)(c) of the 1992 Constitution*
2. *ss. 20(1) and (2), 124(1) of Act 29*

3. *ss. 11(2), 13(1) and 22 of the Evidence Act, 1975 (NRCD 323)*
4. *Miller v Minister Of Pensions [1947] 2 ALL ER 372 at 374*
5. *COP v Isaac Antwi [1961] GLR 408*
6. *The Republic v Francis Ike Uyanwune [2013] 58 GMJ 162, CA*
7. *Brobbeey & Ors v The Republic [1982-83] GLR 608*
8. *Anang v The Republic [1984-86] 1 GLR 458*
9. *Ampah & Anor. v The Republic [1976] 1 GLR 403*
10. *Yeboah & Anor. v The Republic [1999-2000] 1 GLR 149*
11. *Homenya v Republic [1992] 2 GLR 305*