

CORAM: HER WORSHIP MRS ROSEMARY EDITH HAYFORD, ESQ. SITTING AS
DISTRICT MAGISTRATE, DISTRICT COURT "B" SEKONDI ON 21ST DECEMBER,
2022

CC NO. 189/2022

THE REPUBLIC

V

SAMUEL ARTHUR BOISON

TIME: 9:00

ACCUSED - PRESENT

COMPLAINANT - PRESENT

SGT ABREFI NTIAMOAH FOR THE REPUBLIC - PRESENT

F. F. FAIDOO FOR THE ACCUSED PERSON - PRESENT

**RULING – WHETHER OR NOT A PRIMA FACIE CASE HAS BEEN ESTABLISHED
AGAINST THE ACCUSED PERSON**

The accused person herein is charged with stealing contrary to section 124 of the Criminal Offences Act 1960, (Act 29). He pleaded not guilty to the charge, so the prosecution assumed the burden to prove the guilt of the accused beyond a reasonable doubt.

The facts in support of the charge are that the complainants DO2 Daniel Aklibosu and ADO2 Ebenezer Dadzie are fire officers and reside at Effiakuma and Mpintsin respectively. The accused Samuel Arthur Boison is a paramedic with the National Ambulance Service. He is attached to Ghana National Fire Service Sekondi. On 9/5/2022 the accused reported to work at the Ghana National Fire Service Headquarters Sekondi, spotted three old car tyres in their rim and took them home without the consent of the authorities of the Ghana National Fire Service. On 10/05/2022, the Western Regional Command of Ghana National Fire Service detected the missing tyres from their premises and therefore made a report to the police. On 11/05/20 the accused called one of the Fire officers a witness in this case and revealed to him that he had taken the said tyres to his house in order to burn them to expel snakes from his house. The officer on receipt of the information asked the accused to bring the tyres and the accused without hesitation brought the tyres to where he picked them up. The complainants later arrested the accused and handed him over to the police together with the exhibit tyres. At the station, an investigation caution statement was obtained from the accused and after the investigation, the accused was charged with the offence and arraigned before this court.

It is trite that in criminal prosecutions it is the prosecution that carries the burden to prove the guilt of the accused person beyond reasonable doubt. The accused has no such burden to prove his innocence. All he needs to do is to raise a doubt in the case of the prosecution. This is expressed in *section 11(2) of the Evidence Act 1975, NRCD 323* which provides that:

“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 reasonable doubt”.

At the end of the case for the prosecution, however, the prosecution is only expected to have established a prima facie case which means that they should have proved all the ingredients of the offence to require the accused to open his defence. Proof beyond reasonable doubt is considered at the end of the entire trial where the accused has entered his defence. (**SEE TSATSU TSIKATA V THE REPUBLIC [2003-2004] SCGLR 1068**)

In an effort to discharge its burden, therefore, the prosecution led evidence through five (5) witnesses, the complainant PW1, three fire officers (PW2, PW3 and PW4) and the investigator N0. 57550 General Constable Shadrack Obeng.

PW1 told the court that on 10/05/2022 he and his colleague (PW2) were tasked by the officer in charge of maintenance (DO2 Mr Daniel Aklibosu) to lodge a complaint at the Sekondi police of 3 missing car tyres belonging to the Ghana National Fire Service. He further stated that on 12/05/2022, The Regional Fire Commander ACFO1 Mr. Fedrick Ohemeng and his second in command DO1 Thomas Tetteh summoned him to his office and informed him that his orderly says the accused person has the three missing tyres in his possession. In the course of their deliberation, the Regional Fire Commander received a telephone call from the Ambulance Service Administrator at Apremdu that the accused person had informed him of having in his possession the three missing tyres. Thereafter the Ambulance Service Administrator joined the meeting. The accused person was also called into the meeting. According to PW1 the Regional Fire Commander instructed his subordinate to go and bring the exhibit three tyres from a vulcanizer at Apowa. The said exhibits were retrieved and brought to the GNFS Regional Headquarters, Sekondi. PW1 said the accused person was interrogated and he

indicated that he took the said tyres with the mind of selling them to settle his debt, a claim the accused person denies. The accused person was handed over to the Police together with the exhibits

PW2 Albert Asante in his evidence indicated that he was the one who detected that the three tyres were missing and was further instructed to report the matter to the police.

PW3, ASO Ebenezer Ampiah claims the accused called and informed him that the three missing tyres were in his possession and that PW3 should inform the Regional Commander about it and that he, the accused, was willing to bring them back which he did.

PW4 Samuel Ofori Darfour informed the court that he was instructed by his Regional Administrator to go and retrieve the 3 tyres in the possession of the accused person. He called the accused and the same were retrieved from the porch of the accused person

PW5 is the investigator in charge of the matter. He indicated that on 10/05/2022 a case of stealing was reported by the complainants and he took statements from them. He accompanied the complainants to the scene of the crime at the headquarters of the Ghana National Fire Service, Sekondi. On 11/05/2022 the complainants came to inform him that their investigations had led to the arrest of the accused and the three tyres had been retrieved. PW5 further stated that he and his senior colleague proceeded to the headquarters of the GNFS where they met the accused person being interrogated by the Regional Fire Commander and other senior officers in his office. He avers that the accused person was handed over to him together with the three tyres. PW5 said he took an investigation cautioned statement from the accused person and submitted the case docket to his District Officer through the Station Officer. He was instructed to charge the accused person which he did by taking a charge statement from the accused. PW5

tendered in evidence, the accused person's cautioned statement and his charge statement as well as photographs of the three car tyres with the accused as Exhibits SB A, SB B AND SB C. They have been relabeled to read Exhibits A, B and C. The prosecution closed its case thereafter.

It is trite that the prosecution after the close of its case shall either establish a prima facie case for the court to call upon the accused to open his/her defence on the basis that the prosecution has proved all the ingredients or the elements of the offence for which the accused is charged or the accused shall be acquitted and discharged by the court when an ingredient of an offence is not proved even though all the other ingredients of the offence have been proved. **Section 173(1) of Act 30** entitles the court to acquit an accused where the prosecution fails to establish a prima facie case. It provides thus:

"173. Acquittal of accused when no case to answer

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."

The power to rule that the prosecution has failed to establish a prima facie case is given to the court. In this case has the prosecution been able to establish a prima facie case? The accused is charged with stealing under section 124 of Act 29/60 which enacts that:

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

On a charge of stealing the prosecution has to prove three main elements as was stated in **Ampah v The Republic [1977] 2 GLR 171**, namely:

- **Dishonesty**
- **Appropriation**

- **Property belonging to another person**

Element three of the above is easy to determine. It is not in doubt that the three old tyres belong to the Ghana National Fire Service, therefore that is not an issue. The 1st and 2nd elements will be looked at below

Section 120 of Act 29, stipulates that 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 claim of right and with a knowledge or belief that the appropriation is without the consent of a person for whom that person is a trustee or who is the owner of the thing or that the appropriation would, if known to the other person, be without the consent of the other person.

P. K. Twumasi in his book **Criminal Law in Ghana** @ page 313 states that

“The general principle of our criminal law is that where a particular intent is the essence or a necessary element for the constitutions of a crime the prosecution must prove that intent, but intent, being admittedly incapable of positive or direct proof is generally, like any other state of mind inferred from proven facts which of course, includes the act of the person whose state of mind is being inquired into. To say that the accused appropriated the thing dishonestly amounts to saying that at the time he appropriated it he had a guilty mind (mens rea). In short, it does mean that his state of mind was not consistent with innocence”

It is the evidence of PW1 that PAEMT Frank Manu interrogated the accused person and he stated that he took the 3 tyres with the mind to sell to settle his debt. This was denied under cross-examination. This Frank Manu was never called as a witness and none of the 5 witnesses who testified for the prosecution corroborated this particular

evidence. In the investigation cautioned and charge statements which were tendered by PW5 the averment of the accused was consistent. He indicated as follows:

"I saw three car tyres in their rims in front of the GNFS premises close to a tower. I thought the said car tyres were abandoned and I had wanted to burn them at my house to drive away snakes."

It must be noted from the evidence that the accused person called PW3 to inform him that he had the tyres in his possession and that PW3 should inform the Regional Commander. The accused further stated that he was willing to bring

them back. PW3 under cross-examination confirmed that the Accused told him that he took them to burn same to dispel snakes

Q. And he told you that he was going to burn it at his house to dispel snakes and other reptiles, did he say that?

A. Yes, my Lord

The question I pose is, is this someone with a guilty mind who intends to defraud?

What amounts to an "intent to defraud" is defined under the provisions of **Section 16** of **Act 29** as meaning an intent to cause any gain capable of being measured in money or the possibility of any gain to any person at the expense or to the loss of any other person by any unlawful act.

P. K. Twumasi put it this way in his book *"in other words, in a charge of stealing, there must be evidence that the accused, when appropriating the thing had an intent to cause some economic loss to the owner thereof whether certain or uncertain."*

From Exhibit C, it can clearly be seen that the tyres are very old and rusted. PW5 the investigator confirmed this observation and further confirmed that they have been abandoned for a very long time at the mercy of the element and to the accused, he thought they were of no use. Below is what transpired under cross examination.

Q. *As a way of refreshing your memory, have a look at Exhibit C – are they the tyres*

A. Yes

Q. *Now the rims in the tyres are rusted and makes the tyres so old*

A. Yes

Q. *Ordinarily it is an indication that the tyres have been abandoned for a very long time at the mercy of the elements (weather)*

A. Yes

Q. *You took the caution and charge statement of the accused person, is that correct*

A. *That is correct*

Q. *In his statement this is what he stated “I thought the said tyres were abandoned and I wanted to burn them at my house to prevent snakes”, did he say that?*

A. Yes

Q. *And he also added that after picking the tyres he told his friend Assistant Station officer Ebenezer Ampiah that he had picked the tyres even before they started looking for it – do you remember?*

A. Yes

To my mind, the assertion of the accused person that he meant to use the tyres to dispel reptiles is more probable and that is why he even informed another colleague about it. It is my view that he did not intend to gain any financial benefits from the same otherwise he would not have even told anyone about it. I, therefore, conclude that the element of intent to defraud to establish a charge of stealing was not proved by the Prosecution. In effect, the prosecution has failed to make a case sufficiently against the accused for the accused to open his defence. I accordingly acquit the accused person in respect of the count of stealing.

I have observed from the record and evidence that, even though the police in their own wisdom did not see the need to prosecute the accused person, the complainant insisted. From Exhibit 1, a letter that was written by the Deputy Superintendent of Ghana Police, Sekondi, Mr. Isaac Kumnipah to the accused person, paragraph 2 of the said letter stated as follows:

“After giving this matter a careful consideration, I have decided that no further action will be taken in this case, but you are informed that if you are reported again, it may be necessary to take proceedings against you in respect of the latter case”.

This letter was dated the 19th of May, 2022. Clearly, from the contents of the above letter the police took a decision not to prosecute the accused person in respect of this particular offence however, a prosecution would lie if the accused committed another crime. Before this court there is no evidence that this is a different charge but the same charge that the police themselves stated in Exhibit 1, they would not prosecute. This baffle the mind of the court. But the answer was clearly given under cross-examination of the investigator by counsel for the accused person. Below is what ensued:

Q. *After all your investigation you forwarded the docket to your Station Officer to your District Commander for the necessary action, do you recall*

A. Yes

Q. *After the District Commander perused the report, he felt that it was not a prosecutable matter so he issued this letter, Exhibit 1 is that not so*

A. Yes, my Lord

Q. *However, the complainant insisted that you should take him to court to show him some sense that is why you are here (emphasis mine)*

A. Yes

Q. *So, left to the police this matter would have ended at the police station, is that not so*

A. Yes, my Lord

From the above, it is to be seen that the police after their investigation were of the view that the matter was not prosecutable and yet with pressure from the complainant, they kowtowed and decided to process the accused person for court. How unprofessional did the police act to the extent that they have woefully failed to establish a prima facie case against the accused person by failing to prove all the ingredients of stealing?

In the circumstance, I accordingly acquit and discharge the accused person on the count of stealing in accordance with section 173 of the Criminal and other Offences (Procedure) Act, 1960 (Act 30).

(SGD)

H/W ROSEMARY EDITH HAYFORD (MRS)

MAGISTRATE