

IN THE DISTRICT COURT HELD AT WAMFIE ON TUESDAY THE 2<sup>ND</sup> DAY OF  
MAY, 2023. BEFORE HER WORSHIP DZIFA AZUMAH ESQ. DISTRICT  
MAGISTRATE

CC NO. /14/2023

THE REPUBLIC

VRS

ASAMOAH RICHMOND @ PILATO

JUDGMENT

In this particular case the Accused person was charged on one single count. Namely the offence of stealing contrary to **section 124(1)** of the Criminal Offences act of Ghana, **Act 29/60** as amended by paragraph **4 of NLCD398/69** Accused Asamoah Richmond @ Pilato pleaded not guilty to the charge of stealing. Once an Accused Person pleads not guilty, it implies there was an issue for the court to determine. The case of the prosecution was that Adams Ibrahim and Accused Asamoah Richmond are both tricycle riders.

Both parties are residents of Wamfie. Complainant owed a tricycle popularly known as “Pragyia” which he used for commercial purpose. On 12<sup>th</sup> July, 2022 at about 7:00pm accused person collected complainant’s Pragyia as spare rider, with the agreement that when the Accused person closes, he should go and park the Pragyia at the Dormaa Area Teachers’ Credit Union Wamfie under the care of the security man. Accused person, after closing, however, did not go and park the complainant’s Pragyia at the said Credit facility, but rather sent the Pragyia to his house.

On the morning of 13<sup>th</sup> July, 2022 at about 5:30am, complainant went to the Credit facility to take his Pragyia from the Security man, but only to be told by the security man that the Accused person did not come to park the Pragyia. Complainant went to the Accused person’s house to collect his Pragyia, but Accused told the complainant that a thief or

thieves stole complainant's Pragyia, valued at GH¢11,000.00. Complainant reported the incident to the police. Accused person was subsequently arrested. During investigation the Accused person denied offence in his Investigation Cautioned Statement. The Accused person was granted Police Enquiry Bail to be reporting periodically at the Police Station to assist with investigation, but Accused failed to comply with that order. On 20<sup>th</sup> July, 2022 Police re-arrested Accused person and charged him with offence of stealing and brought him before the court.

The duty of the court on a plea of not guilty has been laid down by spans of criminal jurisprudence. It is not to assume the guilty of the accused, but to take the evidence and consider whether the prosecution has successfully proved all the elements of the charge it has preferred against the Accused person.

The general burden of proof, in a criminal case lies on the prosecution to establish the guilty of the Accused. This principle has been arrayed in our statute, in **section 11(2), 13(1)** and (2) of the Evidence Act, **1975, NRCD 323**.

**Section 11(2) NRCD 323** 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 a reasonable doubt."

**Section 13(1) NRCD 323** states that, "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 a reasonable doubt".

In the case of **THE STATE V ALI KASSENA (1962) 1 GLR 144**, in discussing the evidentiary burden on the prosecution in criminal cases, the court said that, "it is of course true that by our law a higher standard of proof is required in criminal cases than in civil cases. But this is subject to the qualification that there is no absolute standard in either case. In criminal cases, the charge must be proved beyond a reasonable doubt, but

there may be degrees of proof within that standard” we will now look at the **ingredient, of the offence charged.**

## **INGREDIENTS OF THE OFFENCE OF STEALING**

Section 124(1) A person who steals commits a second degree felony

Definition of stealing as per section 125 of Act 29 of 1960.

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

In the case of **AMPAH V THE REPUBLIC (1977) 2 GLR 171, CA,**

The court identified the elements stealing as (i) Dishonesty

(ii) Appropriation and (iii) Property belonging to another person.

At page 175, the court proceeded to state as follows:

“this court agrees with the observation of **ABBAN J IN AMPAH V THE REPUBLIC (1976) 1 GLR 403 at 412** that “if these three essential elements are proved to the satisfaction of the court, the court will be bound to convict unless the accused is able to put forward some defense or explanation which ‘can cast a reasonable doubt’ on the case for the prosecution.”

## **ANALYSIS OF LAW AND EVIDENCE**

The prosecution set out to prove these charges and offered the following pieces of evidence through two (2) witnesses. The first prosecution witness (PW<sub>1</sub>) is the complainant. His sworn account was that he was a tricycle rider and resides at Abosaso a suburb of Wamfie. And that on 12<sup>th</sup> July, 2022 at about 7:00pm, he closed from work and Accused Asamoah Richmond came to convinced him to lend him Bajaj tricycle properly known as Pragyia with Registration number M-21 BA 1822 to him to use as a spare rider for the night. He said he told the Accused person Richmond that after work, he (owner) normally parked his Pragyia with the security man at Dormaa Area Teacher’s

Credit Union premises at Wamfie. He stated that he told the Accused person to endeavor to go and park at the said Union's premises after close of work, adding, "I told him that after he closed from work, he should park the Pragyia with the security man at the said Credit Union under the care of the security man". He stated further that on 13<sup>th</sup> July, 2022 at about 5:00am, he went to the said Credit Union to take his Pragyia from the security man only to be told by the security man that Accused Richmond did not come to park his Pragyia. He said he then proceeded to the Accused person, Richmond's house to collect his Pragyia, but only to be told by the Accused that he (Accused) parked the Pragyia in his house and thief or thieves stole his Pragyia which was valued GH¢11,000.00. The complainant said he reported the incident to the Police, and led the Police to arrest the Accused person.

The second prosecution witness (PW<sub>2</sub>), the investigator, in the person of Detective Inspector Thomas Biekuu, stationed at Wamfie stated that on 13<sup>th</sup> July, 2022, whilst on duty, a case of stealing was reported to the Police by one Adams Ibrahim (PW<sub>1</sub>) which was referred to him as an investigator. He said he obtained statement from Adam Ibrahim (PW<sub>1</sub>) who stated that the Accused person tricked him and stole his tricycle which was valued GH¢11,000.00. The Accused the investigator stated, was subsequently arrested. Accused person denied the offence and stated that he parked the complainant PW<sub>1</sub>'s tricycle (Pragyia) in his house, but that he later detected that thief or thieves stole the Pragia from his compound. The Investigator stated that on 20<sup>th</sup> July, 2022, he received an instruction from his District Commander to charge the Accused person with the offence of stealing. He said he served the Accused person with the Investigator Caution Statement, Charge Statement, Charge Sheet, brief facts and PW<sub>1</sub>'s witness Statement and he investigator (PW<sub>2</sub>'s) witness statement. The investigator tended in evidence the Investigation Cautioned Statement and Charge Statement. When the Accused person was given the opportunity to cross-Examine PW<sub>1</sub> after he had tendered in his Evidence in chief, this is what ensued:

**Question:** Did you have any witness present when you handed over

the Pragyia to me?

**Answer:** The day in question, there was no witness who can testify that he or she was present. But I have witness who can testify that I have been giving my pragyia to you as a spare rider.

**Question:** Are your witnesses aware that you asked me to park at the Security man's place at the Dormaa Area Teacher's Credit Union, Wamfie?

**Answer:** That is so. I have witnesses.

**Question:** Where were you standing when you told me to go and park at the Dormaa Area Teacher's Credit Union?

**Answer:** I was standing where I was standing when I gave the Pragyia to you at Wamfie.

**Question:** Why did you ask me to park at the Security at Dormaa Area Teacher's Credit Union, while you were coming for the sales from my house.

**Answer:** I wasn't coming for the sales from your house. You were the one bringing it to me on the previous occasions. The only day I came for the sales from your house is when I went to the security joint and the motor was not there and I followed up to your house to ask for the where about of my motor and you told me that it had been stolen.

Question: I am putting it to you that you never told me to park the Pragya at the Security man's place.

Answer: I told you to go and park at the security man's place.

Question: I am putting it to you that you never showed me where to park the Pragya.

Answer: I showed you where to park.

From the above exchange, it can be inferred that the complainant indeed gave his Pragya to the Accused person. The issue of contention is whether he did instruct the Accused person as to where to park the Pragya at the close of day. Fact cannot be lost that in the Accused person's own statement to the Police, he admitted that on 12<sup>th</sup> July, 2022 at about 7:00pm his friend Ibrahim gave his "Pragya" to him to work with as a spare rider.

He stated further that "In fact my friend Ibrahim warned me that when I close from work, I should park the Pragya with the security men at Teachers' Credit Union. I rather parked it in my house." The Accused person went further to state that "On 13<sup>th</sup> July, 2022 at about 5am I woke up and detected that thief or thieves have stolen the Pragya from my house compound". He said he informed Ibrahim about the theft of the Pragya and that he proceeded to the Police Station to report the incident to the Police," but the rightful owner of the Pragya came and made the case against me."

If in your own statement to the Police, you (accused person) admitted that you were instructed to park the Pragya at the Teachers' Union premises, how come that during cross-examination you are denying that and putting it to the complainant to produce

witnesses as to the truth that he did not instruct you to park at the Teachers' Union premises?

However, since you have not denied that the Pragyia was handed over to you on the day in question, it implies that the Pragyia got missing in your possession and therefore you have to replace it for its owner.

The court therefore order the Accused person to refund the Pragyia to the owner or at least pay the equivalent in cash to the complainant.

Meanwhile at the end of the trial the court has found you guilty of the offence and will therefore convict you accordingly.

You are hereby convicted of the offence and sentenced to a fine of GH¢2000.00 or in default three months in jail.

Meanwhile, the complainant is advised to take a civil action against the Accused to redeem the Pragyia.

**H/W DZIFA AZUMAH ESQ.**

**(MAGISTRATE)**