

IN THE DISTRICT COURT, LA, TRADE FAIR-ACCRA, HELD ON THE 20<sup>TH</sup> DAY OF  
JANUARY, 2023, BEFORE HIS HONOUR JOJO AMOAH HAGAN SITTING AS AN  
ADDITIONAL MAGISTRATE

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SUIT NO. 839/2021

THE REPUBLIC

VRS

1. MOSES ASIGBA
2. PETER JUERGEN JOST

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JUDGMENT

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*Introduction*

1. The accused person was arraigned before this Court for allegedly carelessly and inconsiderately driving his vehicle on 12 June 2021 thereby causing unlawful damage to the vehicle of the complainant, Peter Juergen Jost. He was also accused of failing to report the accident resulting in the damage caused to the complainant's vehicle.

2. At the close of the case for the prosecution, I determined, pursuant to section 173 of the Criminal and other Offences (Procedure) Act, 1960 (Act 30) that the accused has no case to answer in respect of the offences of causing unlawful damage to the vehicle of the complainant and failing to report the accident resulting in the damage caused to the complainant's vehicle. I, therefore, acquitted the accused person on those two offences and ordered him to open his defence on the allegation of careless and inconsiderate driving. This judgment is therefore on whether the accused drove his vehicle carelessly and inconsiderately on that fateful day.

3. Section 3 of the Road Traffic Act, 2005 (Act 683) as amended by the Road Traffic (Amendment) Act, 2008 (Act 761) provides that

“[a] person who drives a motor vehicle on a road without due care and attention, or without reasonable consideration for other persons using the road commits an offence and is liable on summary conviction to a fine not exceeding two hundred penalty units or to a term of imprisonment not exceeding forty months or both.”

*The issue before the Court*

4. There is no dispute that the accused person drove his vehicle into the offside rear bumper of the first prosecution witness. The accused admitted this in his investigation caution statement and his evidence in chief. Whether the accused caused damage to the complainant's

vehicle and the value of the damage is irrelevant to the offence preferred against the accused. The sole question for the Court, therefore, is whether the damage caused was a result of the accused person's failure to exercise due care and attention. To obtain an affirmative answer to this question the prosecution bears the burden of persuasion and proof beyond a reasonable doubt: *Gligah & Atiso v. The Republic* [2010] SCGLR 870.

*The case for the prosecution*

5. The case of the prosecution presented by the complainant is that whilst driving in heavy traffic the accused wrongly overtook him and in the process grazed "the back side of his car on the left." Upon realising what he had done the accused stopped and got out of his vehicle. The complainant and his travelling companion, Belinda Yaa Kyeiwaa Asomani also got out of his vehicle. After inspecting the complainant's

vehicle the accused and the complainant both realised the mudguard of the complainant's vehicle had been damaged. The accused promised to pay for the damage caused. However, because the accused claimed he had a sick person in his vehicle at that time who needed a doctor urgently, he gave his number to the complainant for both of them to subsequently meet on the issue. The accused subsequently refused to respond to the calls and messages of the complainant who thereby reported the matter to the police leading to the arrest of the accused.

6. Ms Asomani gave evidence corroborating in a material particular the testimony of the complainant. She told the Court that whilst in heavy traffic the accused attempted to wrongly overtake the complainant and in the process run into "the backside of the complainant's car." After the accident, she got down with the complainant to inspect the damage. At that point, she recognised the accused as someone she knew and informed the complainant to that effect. The accused promised to pay for the damage caused and gave the complainant his number for that purpose after he had indicated to the complainant that he had a sick person in his vehicle who needed urgent medical attention.

7. In his testimony the investigator, Inspector Alex Boateng told the Court his investigations disclosed that the accused who was driving behind the first prosecution witness in the same direction failed to exercise due care and attention whilst overtaking vehicles ahead of him hence the accident.

#### Case for the accused

8. In his defence, the accused told the Court on that fateful day he was driving his vehicle with two persons on board and got into heavy traffic. He then noticed that one of the passengers was not feeling well. In a bid to help him, the accused turned to ask whether the said passenger whether he wanted to go to the pharmacy or a nearby hospital to seek medical attention. In the process, the accused noticed after turning back to concentrate on the road that his vehicle was

“creeping towards a Suzuki station wagon ahead of him.” He tried to avoid a collision with the said vehicle but his right fender grazed the offside rear bumper of the Suzuki station wagon. The vehicle belonged to the complainant.

9. A cursory evaluation of the evidence I have outlined above shows quite clearly that the testimonies of the prosecution witnesses and most importantly the accused [even without considering his testimony

under cross-examination] establish that the accused drove his vehicle without due care and attention thereby running into the vehicle of the complainant.

*What constitutes driving without due care and attention?*

10. P.K. Twumasi in his seminal book *Criminal Law in Ghana* (Ghana Publishing Corporation 1996) pp 597-599 discusses the distinction between the two offences created by section 3 of Act 683 as amended. For our present purposes, the learned jurist expatiates on the offence of driving without due care and attention as follows:

“...the charge of driving without due care and attention relates and emphasises the fact that the driver has been careless and inattentive in his manner of driving ... [and] may cover cases where a driver’s breach of traffic regulation causes damage to some property or ... in cases where the breach of driving regulations results in damage to other vehicles, but where human beings are not directly involved...”

He goes further to explain driving with due care and attention to mean where the person

“...drives with all his mind focused on the act of driving a motor vehicle on the road. He must be aware that a motor vehicle, being a mechanically propelled object, must be properly placed under control by the person who sets it in motion or puts the mechanism into operation ... he must have proper look-out and observe road traffic regulations....”

According to the learned jurist,

“[i]t is highly essential and imperative that a driver of a motor vehicle observe and comply with the regulations which govern driving a motor vehicle on the road. Any breach of these regulations may constitute a prima facie evidence of careless or negligent driving.”

11. In the instant case, the accused person admits momentarily taking his eyes off the road to attend to his ailing travelling companion in the back seat. When he turned back to concentrate on the road he realised he was just about to run into the complainant’s vehicle and his attempt

to prevent that did not materialise. Paragraph (a) of Regulation 101 of the Road Traffic Regulations, 2012 (L.I. 2180) imposes a duty on a driver

of a vehicle to, whilst driving, maintain complete control over the vehicle and have full visibility of the traffic. The Road Traffic Regulations further provide in sub-regulation (9) of Regulation 106 that a person driving a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard to the speed of the motor vehicle and the traffic conditions of the road (See also sub-regulation (1) of Regulation 165).

12. The testimony of the accused and the prosecution witnesses demonstrate that by taking his eyes off the road whilst his vehicle was in motion thereby running into the vehicle of the complainant the accused did not at that point maintain complete control of his vehicle, neither did he have full visibility of traffic ahead of him because if he did have full visibility of the road he would most likely not have run into the complainant's vehicle. Furthermore, if he had driven at a reasonable and prudent distance and speed considering the nature of the traffic that day, the accident would not have happened. It is my opinion therefore that the accused who caused damage to the offside rear bumper of the complainant did so whilst driving his vehicle without due care and attention. Before I conclude, I shall briefly comment on the cross-examination of counsel for the accused.



13. After examining questions asked under cross-examination and the answers given, I noticed that none of the questions put to the complainant and the investigator impeached the credibility of their testimony. Indeed, for those two witnesses, counsel for the accused was more interested, for the most part, in the damage caused and the value thereof. Whether or not the damage was caused and to what extent is not an element of the offence in question although it might be considered a mitigating factor in sentencing.

14. Regarding the testimony of the second prosecution witness, counsel attempted to make a mountain out of a molehill about whether there was slow-moving traffic or heavy traffic that day. The witness had indicated earlier that there was heavy traffic but under cross-examination, she stated that there was slow-moving traffic. It would appear the intended purpose of that distinction was to discredit the testimony of the witness regarding the fact in issue. In my opinion, slow-moving traffic can nonetheless be heavy and as the witness said,

“I don’t see the difference” within the circumstances of this case. Additionally, a person is not guilty of the offence only when he is speeding. Therefore, it is pointless to have questioned the witness as to whether the accused was speeding. In any case, in slow-moving traffic, it is hardly possible that one may be able to speed. However, a

driver must maintain a reasonably prudent distance between his vehicle and the traffic ahead because the slow-moving nature of the traffic does not absolve an accused from driving with due care and attention.

#### Conclusion

15. It is my considered opinion after evaluating the evidence led by the prosecution and the accused that the accused drove his vehicle without due care and attention and thereby run into the bumper of the complainant's vehicle. Accordingly, I find the accused guilty of the offence of careless and inconsiderate driving contrary to section 3 of the Road Traffic Act. Pursuant to subsection (3) of section 148 and section 294 of the Criminal and other Offences (Procedure) Act, 1960 (Act 30), I hereby sentence the accused to pay compensation of GHC6,000.00 to the complainant and a fine of 200 penalty units or in default, to serve 3 months imprisonment with hard labour.

SGD

JOJO AMOAH HAGAN  
CIRCUIT COURT JUDGE