

**IN THE DISTRICT COURT MARKET CIRCLE HELD AT TAKORADI ON THURSDAY THE 30<sup>TH</sup> DAY OF MARCH, 2023. BEFORE HER WORSHIP CATHERINE OBIRI ADDO.**

**SUIT NO. B3/11/2020**

**THE REPUBLIC**

**VRS**

**GILBERT AMPONG**

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**JUDGMENT**

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**BRIEF FACTS**

The accused in this case was charged on two counts. He was charged with careless and inconsiderate driving contrary to section 30 of the Road Traffic Act 2004 Act 683 and causing unlawful damage contrary to section 172 of the criminal offences Act, Act 29 of 1960.

The facts of the case before this honourable court are that on the 8<sup>th</sup> day of October 2019, at about 4:10 pm, accused driver Gilbert Ampong was driving DAF CF articulated Truck with registration number GR 336-15 from the Harbour towards Kwame Nkrumah Roundabout. On reaching a section of the road just after Paa Grant, roundabout, the accused who was in the inner lane and in the process of changing to the outer lane, failed to observe the road traffic and his vehicle ran into Daewoo Nobira NO.GE 6474 Y driven by Francis Arthur complainant and pw1 herein and caused damage to the said car. On the 10<sup>th</sup> day of October, 2019, both accident Vehicles were tested at DVLA, Takoradi by the vehicle examiner one Mr Samad however vehicle No. GE 6474 Y could not be driven tested due to the extent of damage caused to it as a result of the accident. The accused was charged with the offences and arraigned before this honourable court.

## **EVIDENCE OF PROSECUTION WITNESSES.**

The prosecution in order to prove their case called one witnesses to prove the charges against the accused.

It must be noted that the prosecution initially called two witnesses to prove their case. Pw1 was in court and tendered his evidence to the court and cross examined same by counsel for the accused. The case was adjourned for further cross-examination of pw1 by counsel for the accused but sub subsequently upon a number of adjournments, he failed to appear in court for further cross examination by counsel for the accused. The prosecution prayed the court to abandon the evidence of pw1 and same expunged from records since they can't get through to him and same was granted by the court.

Pw1 in the person of P/W Sgt Juliet Akutey avers she is the police officer stationed at the Central MTTD Takoradi. On the 8<sup>th</sup> day of October 2019, an accident case was reported to police DMTTD Takoradi by the drivers Francis Arthur the complainant herein in charge of Daewoo Nobira car with registration No. GE6474 Y and Gibert Among the accused herein in charge of a DAF CF articulated Truck with registration no. GR 336-15 that they were involved in a motor accident on the Vodafone Road near the Paa Grant round about.

Police proceeded to the scene of the accident met all vehicles with vehicle No. GE 6474 Y which was been driven by complainant badly damaged and same towed to the station. Whiles the Articulated Truck was driven to the station by the driver. On the 9<sup>th</sup> day of October 2019, investigation cautioned statements were obtained from the accused. On the 10<sup>th</sup> day of October 2019, the articulated Truck with registration no. GR336-15 was examined at DVLA Takoradi whiles the Daewoo vehicle with registration no. GE 6474 Y was examined at the DVLA on the 11<sup>th</sup> day of October 2019 respectively by the examiner Mr. Samad.

On the 11/11/2019, police revisited the scene of accident together with the accused and the complainant and measurement was taken. A sketch was prepared to that effect signed by the accused and the complainant.

Pw1 tendered in evidence, the investigation cautioned statement of the accused, charged statement of accused, sketch of the scene of accident, driver's license, insurance certificate, and road worthiness certificates of both vehicles, pictures of the accident vehicle NO. GE6474 Y, testing officers report on both vehicles which are in evidence as exhibits A, B,C,D,E,F,G,H,I,J respectively.

### **THE ACCUSED EVIDENCE AT THE TRIAL**

According to the accused, on that faithful day the 8<sup>th</sup> day of October 2019, he loaded cement on his articulated Truck with registration no. GR336-15 and was on his way from Paa Grant roundabout towards the Kwame Nkrumah Circle. On reaching Paa Grant roundabout, vehicles from Harbour slowed down for vehicles from New Takoradi to enter the roundabout. And at the time, the roundabout was riddled with deep and big potholes making it impossible to speed. As his vehicle almost moved out of the roundabout and entered the Vodafone dual carriage way, he heard something hit the back of his trailer and he thought his car was hitting a pothole.

He subsequently heard people shouting and he was signalled by a certain man with a shop around the area to stop which he did same. When he got down, he saw people gathered around the last but one of his trailer tyres on the passenger side of the vehicle with another Vehicle a Daewoo Nobira saloon car with registration number GE 6474-Y parked very close to the said tyre with the driver sitting in it. On moving toward the car, he realised the driver has hit his tyre with the left fender of his car. According to accused the people who came around to observe what happened, blamed the driver of the said saloon car for not exercising caution and passing the wrong place and thus causing the accident.

Accused avers, it is the negligence and the carelessness of the driver of the salon car that caused the accident but not his doing. Accused further avers, later the police arrived at the scene took his license and instructed him to drive his vehicle to

Takoradi Central police station but the saloon car had to be towed to the said police station.

## **LAW**

The prosecution in a criminal case is required to prove its case beyond reasonable doubt before it can secure conviction see sections 11 and 13 of the

Evidence Act NRCD 323 see also the case of Sabbah v the republic (2009) SCGLR 728

The requirement of the law per **Article 19(2) (c) of the 1992** constitution is that a person charged with a criminal offence is presumed innocent until he is proved guilty. The article reads:

(2)“ a person charged with a criminal offence shall

(c) Be presumed to be innocent until he is proved or has proved guilty”

The burden of proof in a criminal action therefore totally rests on the prosecution.

**Section 11(2) of the Evidence Act NRCD 323** provides that, for the prosecution to succeed in discharging that burden of proof, it must produce evidence as to facts that are essential to guilt of the accused person in such a manner that the totality of the evidence would tell a reasonable mind that those facts exist beyond reasonable doubt.

**Section 11(2) of NRCD 323** reads:

“In a criminal action, the burden of producing evidence, when it is on the prosecution as to a fact, which is essential to guilt, requires the prosecution to produce sufficient evidence so that on the totality of the evidence a reasonable mind could find the existence of the fact beyond reasonable doubt”.

COUNT ONE.

Careless and Inconsiderate Driving contrary to section 30 of the Road Traffic Act, Act 683 as amended by Act 761/2008.

It must be noted that the prosecution charged the Accused under the Wrong section of the Act. Careless and inconsiderate driving is under section 3 of the said Act.

Currently the position of the law is now settled that mere technicalities in a charge sheet do not occasion a miscarriage of justice and an appeal shall not succeed on mere technicalities unless it is proved that the technicality has occasioned a substantial miscarriage of justice. The position of the law is that is that failure to refer to the contravened enactment or quoting a wrong section of the enabling enactment is not fatal to affect a conviction or acquittal as that technicality shall not occasion a substantial miscarriage of justice.

See the cases of NKANSAH V THE REPUBLIC (1980) GLR 184, See also DOCHIE V THE STATE (1965) GLR 288, BULLEY NEEQUAYE V THE STATE (1965) GLR 427

Similarly, under the Courts Act, Act 459, s.31 states:

“(2) the court shall dismiss the appeal if it considers that no miscarriage of justice has actually occurred or that the point raised in the appeal consists of a technicality or procedural error or a defect in the charge or indictment but that there is evidence to support the offence alleged in the statement of offence in the charge or indictment or any other offence of which the accused the accused could have been convicted on that charge or indictment.....’

Base on the above position of the law, the prosecution citing a wrong section of the Act is not fatal to the instant action.

Section 3 of the Road Traffic Act, Act 683 2004 as amended by Act 761 2008 defines careless and inconsiderate driving as:

“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 200 penalty units or a term of imprisonment not exceeding 40 months or both.”

Therefore, the ingredients that the prosecution need to prove are that:

- a. The accused drove his articulated Truck on the road without due care and attention
- b. Or the accused drove the said Articulated Truck on the road without reasonable consideration for other persons using the road.

According to pw1 the investigator herein, on the 8<sup>th</sup> day of October 2019, a case of accident was reported for investigations involving vehicle no. GE 6474 Y driven by the complainant herein and car with registration no. GR 336-15 driven by the accused herein. Police reported to the scene of the accident and investigation cautioned statements and charge statements of the accused was taken. Both vehicles were examined at DVLA, Takoradi by the examiner Mr Samad and a report made in respect of same. Measurement of the crime scene was taken and a sketch drawn accordingly. Both parties presented their driver's license, road worthiness certificate and insurance certificates and they were all valid. Photograph of the accident vehicle No. GE 6474 Y was taken.

According to pw1, the accused driver who was driving in the inner lane on the dual carriage on the Vodafone Road switch to the outer lane where the complainant driver was driving his salon car therefore hitting the said car and damaging same. This became evident during the cross examination of pw1 by counsel for the accused person. The relevant portion of the cross examination is as follows:

Q: I put it to you that in your witness statement you did not tell the court the investigations you conducted and whether it revealed how the incident took place?

A: My investigations revealed that the accused was at fault.

Q: so, which of the two vehicles entered the dual carriage first?

A: from where they were coming from, the accused was coming from New Takoradi towards Kwame Nkrumah roundabout while the complainant was from Sekondi towards the same direction so when they all entered the Vodafone Road, the accused driver took the inner lane while the complainant took the outer lane but from investigations it revealed that the accused did not observe the road before moving

into the outer lane. So, from Exhibit C, the width of the road measured 8.20 meters but where the impact was to the near side was 2metres.

It should be noted that counsel for the accused did not specifically challenged the assertion of pw1 in respect of her answer above that upon her investigations accused moved from the inner lane into the outer lane without observing the road thereby hitting the complainant saloon car with reg No. GE6474 Y but rather counsel for the accused sought to put across that as an articulated Truck driver they have the same right to switch lanes just as salon cars like that of the complainant car has. The relevant cross examination is as follows:

Q: you agree with me that articulated vehicle like the one the accused was driving switch lanes all the time?

A: all the vehicles have the right to switch lanes.

Q: it is normal for articulated Trucks to switch lanes all the time?

A: it is not normal all vehicles switch lanes it depends on where you want to go.

Q: I put it to you that it is normal for articulated Truck to switch lanes when driving

A: Yes, but you have you have to do that with caution.

Q: if Articulated vehicle want to switch lanes what should the driver do?

A: since it was a dual carriage road, he has to be careful, but he didn't observe whether other vehicles were in the outer lane before switching.

The questions of counsel for the accused person are admission that the accused herein switch lanes from the inner lane to the outer lane as alleged by the prosecution.

Although I agree with counsel for the accused that an articulated Truck like all other vehicles plying the roads has the right to switch lanes, they have to do so carefully taking into considerations other road users.

The prosecution tendered in evidence exhibit C, thus the sketch of the measurement taken at the scene of the accident to corroborate its case which said sketch was not challenged or objected to by counsel for the accused.

A cursory look at the said sketch reveals the width of the road measuring 8.20 meters, from the point of the impact marked as A, to the near side of the road measured 2 metres obviously from the sketch, and where the impact took place, the accused driver moved from the inner lane into the outer lane thereby hitting the complainant vehicle. From where the point of impact was to the resultant position marked E is consistent. If the articulated Truck driver hit the complainant car at the point of impact marked A, the obvious resultant position thus where the salon car was dragged to upon been hit by the articulated Truck, will move to the same direction as indicated on point E. the court finds the point of impact to the resultant position to be consistent.

Either side of the road thus the inner lane and the outer lane measures 4.10 meters. This assertion was admitted by the accused under cross examination. The relevant questions are as follows:

Q: I put it to you that both of you had only 4.10 metres in your respective lanes

A: yes, it's true.

As admitted by the accused with the width of the road measuring 8.20 metres, both drivers were entitled to 4.10 metres in their respective lane however from the point of impact to the nearside of the road measured 2 metres which means the accused driver moved extra 2.10 meters into the outer lane thereby hitting the complainant salon car.

According to prosecution the two drivers entered the dual carriage road at the same time in their respective lanes. Counsel of the accused sought to put across during his cross examination of the pw1 the investigator herein that the accused driver and the



complainant, did not enter the dual carriage at the same time however counsel for the accused failed to let it known to court during their evidence to the court which of the two cars entered the dual carriage road first as he is trying to put across. From a cursory look at exhibit C, it is obvious that both parties were on the dual carriage road at the same time owing to the impact of the said vehicle.

From exhibits J series the pictures of the damage car which same was tendered in evidence without objection from accused counsel revealed, the impact started from the back driver's side of the salon car running through the side to the front of the said car. From the said exhibit J series, it appears to the court that per the damaged caused to the complainant vehicle, the accused driver switched the lanes swiftly thereby hitting the salon car.

The accused in his evidence to the court avers his vehicle almost moved out of the roundabout unto the dual carriage way thus the Vodafone Road when he heard something hit the back of his trailer and he was signalled by someone to stop. When he got down, he realised the complainant's salon car has hit the back of his trailer tyres at the passenger side of his vehicle and upon getting down he realised that the complainant driver has hit the left side of his side tyre with the left fender of his car this piece of evidence of accused was stated by him in his investigation cautioned statement and charged statements of the accused which was tendered by the prosecution as exhibits A and B respectively.

From exhibit J series, thus the pictures of the damage car, it is not possible for the complainant salon car to hit the back of accused trailer and the damage will start from the back driver's side of the saloon car running through the side to the front of the car. Looking at the said exhibit J series, the court finds that looking at the extent of the damage, the accused made a swift shift into the outer lane, causing his trailer to hit the back driver side of the salon car running through the side to the car to the front of the car and even damaging the windscreen as well. Assuming without admitting that the complainant driver was at fault thereby hitting the back of the accused car as alleged by the accused, ideally, the damaged of the car could have

seen only on the front side of the salon car or the saloon car could have run under the articulated Truck.

The court finds that it was rather the accused driver who hit the complainant car per exhibit J Series thus the pictures of the damaged salon car tendered in evidence by the prosecution. And therefore, accused evidence that it was the salon car that hit the back of the trailer is unsustainable and reasonably not probable.

Counsel of the accused person sought to put across during the cross examination of pw1 that, the prosecution piece of evidence is untrue since they tendered only pictures of the damaged vehicle belonging to the complainant and not that of the accused. The relevant cross examination are as follows:

Q: now you have pictures of the complainant vehicle but you don't have any pictures of the articulator Truck

A: there is no damage to that car

Q: I put it to you that, that is not, correct?

A: the picture was not taken

Q: then I put it to you that this piece of evidence is not, correct?

A: it is true My Lord whatever I have said in this court is true.

The court finds the above questions of the counsel for the accused person as irrelevant. Counsel for the accused person failed to make it known to the court, how relevant the picture of the articulator Truck will help the case. In criminal matters prosecutors are required to gather evidence and are required to prove their case beyond reasonable doubt. They have the right to tender in court, evidence which the prosecution is of the believe that will help their case. If counsel for the accused person is of the opinion that the tendering in of the picture of the articulated Truck will help in discrediting the evidence of the prosecution or help the case of the accused, nothing prevented counsel for the accused to tender the said picture of the Articulator Truck in evidence at the time they were opening their defence, to prove

his case. Therefore, the assertion that the prosecution failed to tender the said picture is unsustainable.

From the reports from the DVLA vehicle examiner which is attached to exhibit D, as well as the police reports which are in evidence as exhibit F respectively and which same were not challenged or objected to by counsel for the accused reveal that while the saloon car with registration No. GE 6474 Y, was not drive tested due to the extent of the damage, the articulator Truck with registration no. GR 336 -15 was drive tested and reports reveal that the said Articulator car was in good condition, the braking, steering, electrical systems and other Mechanisms were found to be in good working condition prior to the accident.

From the above report, it cannot be said that the accused driver switching lanes swiftly to the outer lane thereby hitting the saloon car and damaging same, is as a result of any defect or failure in the said car which resulted in the accident.

The prosecution tendered in evidence exhibit D and H which reveals that both the insurance certificate and road worthiness certificates of the accused Truck was in good condition. The court finds that the articulator Truck was therefore fit to ply the road at the time of the accident as such, it cannot be said that the said Truck was not fit to be driven on the road thereby causing the accident to that effect.

The accused in his evidence to the court avers, when the accident happened people around blamed the driver of the saloon car the complainant herein for not exercising caution and causing the said accident as such it was the negligence and carelessness of the complainant that caused the accident. The accused however failed to call any of the people he alleged said the accident was caused as a result of the carelessness of the complainant to corroborate his evidence.

All that he said in this court are just afterthoughts as well as bare assertions without any proof.

From the totality of the evidence before the court and evaluation of same supra, the court finds that the prosecution has been able to prove beyond reasonable doubt the charge of careless and inconsiderate driving against the accused.

On the part of the accused, all that he needs to do by way of producing evidence is to raise a doubt as to his guilt. **WOOLMINGTON V DIRECTOR OF PUBLIC PROSECUTIONS (1935) AC 462** is the locus classicus on this principle where the Appeal court of England per Sankey LC expressed the view that

“.....while the prosecution must prove the guilt of the prisoner, there is no such burden laid on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the Jury of his innocence.”

The accused has not been able to lead sufficient evidence to discredit the evidence of the prosecution nor raise a doubt in the mind of the court as to his guilt.

The court finds prosecution has been able to prove the charge of count 1 against the accused Gilbert Among.

In view of the foregoing and all the above the court hereby found accused Gilbert Among guilty of the offence of careless and inconsiderate driving contrary to section 3 of the Road Traffic Act 683 2004 as amended by Act 761 2008 and convicts him accordingly in respect same.

## COUNT 2

Unlawful Damage contrary to section 172 (1) of the criminal offences Act, Act 29 of 1960. On the charge of Unlawful damage contrary to section 172(1) of the criminal and other offences Act, Act 29 of 1960

Section 172(1) states a person who intentionally and unlawfully causes damage to property

- (a) To a value not exceeding 100 Ghana cedis or to no pecuniary value shall be guilty of a misdemeanour.
- (b) To a value exceeding 100 Ghana cedis commits a second-degree felony

174 (1) states: a person does an act or cause an event unlawfully, within the meaning of the provisions of this Act relating to unlawful damage where that person is liable to a civil action or proceeding or to a fine or any other punishment under an enactment,

- a. In respect of the doing of the Act causing an event; or
- b. In respect of the consequences of the Act or event or
- c. In which that person would be so liable if that person caused the event directly by a personal act or
- d. In which that person is liable to be restrained by injunction or any other proceeding from doing that act or causing that event.

(2) States that it is immaterial whether a person is accused of a criminal offence in respect of any premises or a thing, is or is not in possession or occupation of the premises or of that thing.

The prosecution ought to prove that the accused

- (a) Intentionally
- (b) Unlawfully
- (c) Caused damage to property belonging to someone exceeding 100.00.

The prosecution in proving their case did not indicate in the charge sheet the value of the damage caused by the accused person neither did they lead evidence in respect of same in court.

Under section 172 (1) (a) where the value of the damaged item does not exceed GH¢100 cedis, and prosecution is able to prove same, the punishment of such offence is a misdemeanour which maximum sentence does not exceed 3 years. Under the section 172 (1) (b), where the value of the damage caused exceeds ghc100 it's a second-degree felony. Based on this the punishment preferred under each subsection of section 172 (1) (a) and 172(1) (b) are distinct.

That notwithstanding, the evidence adduced by the prosecution specifically exhibits D and F being the vehicle Examiners report and the police reports as well as exhibits J series photographs of the damaged car, the court make an inference that the said damage as shown in exhibits J series will take more than GH¢ 100 to repair same.

Similarly exhibits F and D states the items that were damaged on the said vehicles. The said items are: front windscreen smashed, front bonnet grazed and dented, offside head lamp smashed, offside front fender crumpled, offside front door mangled, front bump broken, dust board broken off, steering air bag busted, radiator cross member bent and so on just to mention a few.

The court make an inference that clearly these items will cost more than ghc100.00 to repair same.

Therefore, in the opinion of the court all evidence adduces on record leads to the fact that the prosecution is coming under section 172(1) (b) of the Act 29 although the prosecution failed to quote the value of the damage.

Under section 4 (1) of Act 29 of 1960, states: "this Act shall not be construed strictly, either as against the republic or as against a person, accused of a criminal offence but shall be construed amply and beneficially for giving effect to the purposes of this Act"

Therefore, in the case of the STATE V OBENG & OTHERS 1967 GLR 91, the court held:

"By section 4(a), the courts are enjoined not to construe the code strictly either as against the state or as against the accused but the code should be construed amply and beneficially for giving effect to its purposes"

The prosecution by proofing the intent of the accused adduced evidence that the accused who was driving in the inner lane switch to the outer lane where the complainant was, thereby causing damage to the complainant car. This assertion by the prosecution was not challenged by counsel for the accused person but rather

counsel for the accused sought to put forward that as an articulator Truck driver, the accused had the right to switch lanes just as other vehicles have the right to do same.

From these questions of counsel for the accused as well as answers of the prosecution as stated supra, as well as findings of the court found supra that the accused intended to switch lanes at the time of the incident.

It is worthy of note that a man intends the natural and possible Acts of his actions.

The prosecution adduced evidence to the effect that the Act of the accused switching lanes are unlawful. This was evidence when counsel for the accused asked the prosecution under cross examination.

Q: you agree with me that articulated vehicle like the one the accused was driving switch lanes all the time?

A: all the vehicles have the right to switch lanes.

Q: it is normal for articulated Trucks to Switch lanes all the time?

A: it is not normal all vehicles switch lanes it depends on where you want to go.

Q: I put it to you that it is normal for articulated Truck to switch lanes when driving

A: Yes, but you have you have to do that with caution.

Q: if Articulated vehicle want to switch lanes what should the driver do?

A: since it was a dual carriage road, he has to be careful, but he didn't observe whether other vehicles were in the outer lane before switching.

As the court found supra, all cars including articulator Trucks have the right to switch lanes but when switching same one need to look out for other drivers and road users in that lane not to cause any accident or injury to them.

The court finds that the accused crossing lanes to the outer lane without checking the vehicles coming on that lane, the very Act of the accused is unlawful. In exhibits C, tendered by the prosecution reveal as found supra that the accused went into the

outer lane extra 2.10 meters thereby hitting the complainant car and damaging same. Counsel for the accused never challenged the said exhibit C on record but rather sought to attack the prosecution for failure to tender the picture of the articulator Truck. Which the court found supra that nothing prevented counsel for the accused to tender the said picture at the time he was called upon to open their defence if they are of the view that it will inure to their benefit.

The court finds that the accused caused damage to the complainant car and this is evident in exhibit J series as well as exhibits D and F respectively. Counsel for the accused never challenged the extent of the damaged caused to the complainant saloon car.

Prosecution adduced evidence to the effect that the said saloon car of the complainant was so damaged to the extent that it needed to be towed to the police station. This was corroborated by the accused who stated in his evidence to the court that he was able to drive his vehicle to the police station but the complainant car needed to be towed to the police station respectively.

From the totality of the evidence on record, the court finds that the prosecution has been able to prove beyond reasonable doubt the charge of unlawful damage under section 172(1) (b) against the accused. The accused evidence proffered in court has not cast any doubt on the mind of the court as to his guilt. See the case of **WOOLMINGTON V DIRECTOR OF PUBLIC PROSECUTIONS (1935) AC 462** is the locus classicus on this principle supra.

of in view of the foregoing and all the above the court hereby found accused Gilbery Among guilty of the offence of Unlawful damage contrary to section 172(1) (b) of the criminal offences Act, Act 29 of 1960 and convicts him accordingly in respect same.

Pre-sentencing trial. In handing down the sentence, I have considered the mitigation of the accused person and the prosecution respond to it, I have considered the



offences for which the accused person was charged with, in the circumstance the court sentence the accused as follows

Count 1: 100 penalty units

Count 2: 300 penalty units' sentences to run concurrently in default 2 years imprisonment.

In addition, the court ordered the accused to repair the vehicle of the complainant with reg. No. GE6474 Y by the end of May 2023.

Restitution Order: The prosecution is to return the said vehicle back to the complainant herein and same repaired by the accused.

**(SGD)**

**H/W CATHERINE OBIRI ADDO ESQ:**

**(MAGISTRATE)**