

**IN THE DISTRICT COURT HELD AT DAMBAI BEFORE HIS WORSHIP
ALHASSAN DRAMANI, ESQ. ON MONDAY, 7TH FEBRUARY, 2023**

CASE NO: 7/09/2023

THE REPUBLIC

VRS

TAHIRU JEBRILA

ACCUSED PERSON PRESENT

COMPLAINANT PRESENT

ASP ALHASSAN A. RAZAK FOR PROSECUTION PRESENT

NO LEGAL REPRESENTATION

JUDGEMENT

The accused person is charged with two counts of Stealing contrary to Section 124 (1) of the Criminal and Other Offences Act, 1960 (Act 29) and dishonestly receiving contrary to section 146 of the criminal offences Act, 1960 (Act 29). He pleaded not guilty to both counts after the charges had been read out and explained to him the Twi language.

FACTS OF THE CASE

The facts of the case as presented by the prosecution are that the complainant, Yaw Yaro is a driver and resides at Dambai Lakeside whilst the accused Tahiru Jebrila is also a driver and lives at Dambai Zongo. On 29th March, 2022 at about 9:30am complainant drove his Man Diesel truck with registration number GW-8241 V to the Alinco fuel station at Dambai and bought diesel worth GH¢5,600.00 into the truck. After the purchase of the

diesel, the complainant proceeded to a mechanic shop at Banka junction, Dambai, for servicing of the vehicle. The servicing was not completed and so he was made to leave the truck there for continuation the following day. On 30th March, 2022 at about 7:30am Complainant went to his truck and detected that all the diesel had been siphoned from the tank. He reported the case to the Dambai Police for investigation. On 31st March, 2022 whilst investigation was ongoing the police had information that the accused was having in his possession some jerry cans of diesel which he was offering for sale. The police proceeded to the house of the accused and met him having in his custody nine jerry cans of diesel valued at about GH¢5,600.00. When the accused was questioned by the police as to how he got the diesel, he said it was sold to him by a driver working with a certain construction company. He requested that police should give him some time to invite the seller of the diesel for confirmation. He was cautioned to that effect and he maintained that he will be able to produce the seller. The accused was admitted to bail to enable him assist the police locate the alleged seller of the diesel but to no avail. Police also requested the accused to mention the name and location of the construction company for the seller to be traced but the accused failed to do so. After investigation accused was charged with the offences and put before this Honourable Court.

The prosecution in proving its case called two (2) witnesses including the investigator and tendered two (2) exhibits that is the caution and charged statements of the accused person marked Exhibits A and B respectively.

PW1 confirmed the facts as presented by the prosecution.

PW2 told the court per her witness statement filed on 1st November, 2022, that, on 29th March, 2022, she was the investigator on duty at the station when a case of stealing was reported and referred to her for investigation. According to her she obtained a statements from PW1 and another witness by name Aliu Mumuni, in order to have a fair knowledge of the case reported. PW2 added that during investigation she had information that the

accused had in his possession some jerry cans of diesel and was offering same for sale. PW2 stated further that police proceeded to the house of the accused and met him having in his custody nine (9) jerry cans of diesel valued about GH¢5,600.00. According to PW2 when the accused was questioned as to how he came by the diesel he indicated that he bought it from a certain driver who works with a construction company. But the accused failed to mention the name of the driver or the construction company to the police. PW2 concluded that after investigation she was instructed to charge the accused person with the offences as stated on the charge sheet. PW2 subsequently tendered in evidence the cautioned and charge statements of the accused person without any objection.

Thereafter, the prosecution closed its case.

THE CASE OF THE DEFENCE

In opening his defence, the accused person told the court that he is a driver living at Dambai Zongo. According to defendant, it is not true that he stole diesel or bought any stolen fuel from anyone. Defendant stated that on 29th March, 2022 at about 2:45pm he was in the house when the seller of the diesel called him on phone and told him that he had nine jerry cans of diesel and he is in need of money and wanted to sell same. Accused said he was about going to buy diesel when he received the phone call so he expressed interest in buy the diesel. According to accused he paid GH¢220.00 for each jerry can and in total paid GH¢1,980.00 for the nine jerry cans. The case of the accused is that he does not know the seller personally but it was his friend Aliu Mumuni, who introduced the seller to him as a friend. The accused stated that he does not sell fuel and did not inform anyone that he was selling fuel. The accused said he bought the diesel for his own use.

The accused did not call any witness and therefore brought his defence to a close after his evidence.

After the trial, it became the duty of the court to ascertain the following:

1. Whether or not the accused person stole the complainant's diesel worth GH¢5,600.00.
2. Whether the accused dishonestly received diesel worth GH¢5,600.00 being property of the complainant.

The cardinal rule in all criminal proceedings is that the burden of establishing the guilt of the accused person is on the prosecution; and the standard of proof required by the prosecution should be proof beyond reasonable doubt as provided in the **Evidence Act, 1975 (NRCD 323)**, per sections 11(2) and 13(1), and also as was stated in the case of **Donkor v. The State [1964] GLR 598.**

Likewise the case of **Republic v. District Magistrate Grade II, Osu; Exparte Yahaya [1984-86] 2 GLR 361 – 365,** where Brobbey J. (as he then was) stated and I quote:

“One of the cardinal principles of criminal law in this country is that when an accused person pleads not guilty, his conviction must be based on evidence proved beyond reasonable doubt.”

Now to the first issue whether the accused person stole the complainant's diesel worth GH¢5,600.00

Section 125 of Act 29 states as follows:

“A person steals if he dishonestly appropriates a thing of which he is not the owner”.

In the case of **Brobbey & Others v. The Republic [1982-83] GLR pgs 608-616,** Twumasi J. stated as follows:

“Three essential elements of the offence of stealing become obvious and they are:

- (1) That the person charged must have appropriated the thing allegedly stolen.

(2) That the appropriation must have been dishonest.

(3) That the person charged must not be the owner of the thing allegedly stolen.”

The accused person throughout the trial denied stealing the complainant’s diesel worth the sum of GH¢5,600.00. Similarly, in his cautioned and charge statements, he maintained his innocents and wrote as follows:

“..... It is not true I stole any diesel or bought any stolen fuel. But it is true that I bought nine jerry cans of diesel from someone I know through a friend known as Aliu”.

From the record, there is no doubt that the complainant’s diesel was stolen from his truck. However, what remains to be established is whether it was the accused who stole the diesel. The prosecution has maintained that it is the accused who stole the diesel. The prosecution has however, not been able to lead evidence to establish through any of its witnesses that the accused was seen around the truck of the complainant on that fateful day.

In the case of **Dogbe v. The Republic [1975] 1 GLR 118-126 @ 121**, the court held that:

“In criminal trials the identity of the accused as the person who committed the crime may be proved either by direct testimony or by circumstantial evidence of other relevant facts from which it may be inferred by the court. In Cross on Evidence (2nd ed.) at p. 43 this is what is stated:

‘When there is no doubt that an act has been done, and the question is whether it was the act of a particular person, all relevant evidence is normally admissible in order to prove or disprove that fact’.”

From the evidence adduced during the trial, the prosecution sought to prove the identity of the accused person by indirect means. In his statement submitted to the police on 30th March, 2022 PW1 categorically stated as follows:

“..... On 30th March, 2022 at about 7:30am I went to where my car was parked and detected that some of the diesel was on the ground. I suspected my fuel has been stolen so I quickly on my ignition and noticed that the gauge was down so I was surprised because immediately I bought the fuel I went to the fitting shop. And an amount of GH¢5,600.00 worth of fuel cannot just drain from the car like that, so I find out from the people around and they all said they know nothing about it. So I decided to come and lodge an official complaint to that effect. **I wish to state that I don't suspect anyone to be a suspect to the crime committed.**”

At paragraphs 5 & 6 of her witness statement the investigator stated that “on 31st March, 2022, police had information that the accused person was having in his possession some jerry cans of diesel that he was offering for sale. Police proceeded to the house of the accused and met him having in his custody nine jerry cans of diesel valued about GH¢5,600.00 and his arrest was effected”.

In the case of Ameshinu v. The Republic [2010] 34 MLRG 207 @ 215, the Court of Appeal per Apaloo J.A held that:

“Where the identity is in issue, there can be no better proof of the identity than the evidence of a witness who swears to have seen the accused person committing the offence charged.” Reference is also made to Regina v. Christie [1914] AC 545 per Viscount Haldane, L.C.

From the evidence neither PW1 nor PW2 testified that they saw the accused person stealing the diesel from the complainant's truck. In fact PW1 stated unambiguously that

he does not suspect anyone as being the person who committed the theft, this means that he does not suspect the accused person as being the thief. PW2 on her part stated that she had information that the accused person was in possession of nine jerry cans of diesel in his house and when they went they actually found that quantity of diesel in his possession. I see this as circumstantial evidence on which prosecution is trying to tie its case on. However, I find it difficult to appreciate how this links the accused to the case of stealing from the complainant's vehicle.

It is common knowledge that following the recent weekly and sometimes daily increases in fuel prices at the pumps, motorists particularly in this part of town buy fuel to keep for future use in order to cut cost.

It is also significant to note that the accused stated in his evidence that he bought his fuel from the seller at about 2:45pm on the 29th March, 2022. This piece of evidence by the accused was not discredited by prosecution. However, in the contrary, PW1's case was that on 29th March, 2022 at about 10:40am after buying fuel into his vehicle's tank, he took the truck with registration number GW-8241-U to a fitting shop at Banka junction for maintenance and was there till 5:40pm.

Going by the above it is safe to infer that if the diesel in PW1's car was stolen at all, then the theft happened after 5:40pm. In that case, it also means that the accused bought his nine jerry cans of diesel over three and half hours before PW1 left his vehicle at the workshop. In the circumstances, it is highly improbable that the diesel found in the accused person's possession was the same or part of the diesel stolen from PW1's truck.

The above points to an irresistible conclusion that the prosecution's case against the accused person is fundamentally weak and floured. In fact, the weak nature of prosecution's case further came to light when PW1's evidence was tested under cross

examination by the accused person on the 19th of December, 2023. Below are excerpts of what transpired:

Q. How many barrels or drums of fuel does your truck take?

A. it takes 360 (three hundred and sixty) liters that is one and half drums (barrels).

Q. Do you know how much a liter of diesel cost at the time (29th March 2022?)

A. No I don't know, I did not check.

Q. Do you know the price of a jerry can of diesel at the time?

A. No.

Q. I put it to you that a jerry can of diesel in March, 2022 was sold at GH¢220.00.

A. I cannot tell.

Q. I further put it to you that a liter of diesel as at March, 2022, was sold at GH¢9.60.

A. I don't know the price per liter at the time. I only filled my tank

Q. Did you calculate the cost before buy the fuel on that day?

A. No, I only asked them to fill the tank and afterwards I paid.

Q. Do you know the number of liters that are contained in one jerry can?

A. I don't know.

Q. I put it to you that the nine jerry cans of diesel the police showed to this court is only 225 liters and not 360 liters

A. I said I had 360 liters in my car tank and that is what was stolen. I did not mention what is in the jerry cans.

Q. Will you agree with me that the diesel in question is not yours?

A. I handed over the case to the police for investigation so I cannot tell whether the diesel is mine or not.

The above dialogue shows that the complainant is not a truthful witness. Even though he admitted that he did not know how much a liter of diesel cost at the time, he indicated that his truck's tank takes 360 liters of diesel and that he filled the tank on that fateful day. The accused person's contention that a liter of diesel cost GH¢9.60 as at March, 29 2022 was also not disputed by him. So, if a liter of diesel at the time costs GH¢9.60 and PW1 indeed bought 360 liters into his tank, a simple erythematic will show that the total cost of diesel bought by PW1 should be GH¢3,456.00 and not the GH¢5,600.00 he wants this court to believe. Additionally, PW1 also indicated in the above encounter that he is unsure whether the diesel in possession of the accused was his.

The investigator who was expected to rescue prosecution's case rather performed miserable, thereby, given the accused the licence to punch damaging holes into her work, thus creating serious doubts in the mind of the court.

Below are excerpts of what took place between the investigator and the accused when the investigator came under investigation.

Q. When the complaint was lodged did you visit the fuel station to find out whether the complainant indeed bought fuel from that station on that particular date and if so at what cost.

A. Yes, I did.

Q. From your investigation what was the price per liter.

A. I did not ask of the price per liter. I only wanted to know whether the complainant bought fuel there.

Q. I put it to you that if you had asked of the price per liter you would have known the number of liters in the jerry cans that were in my possession as compared to the number of liters PW1 claim was stolen from his truck.

A. The case I was investigating was not about the number of liters but whether the complainant's fuel was stolen from his car tank.

Q. Will you agree with me that you are only here to connive with the complainant to take my property away from me.

A. I will not agree with you unless you are able to produce the one who sold the fuel to you.

Q. From your investigation do you know how much a jerry can of fuel cost as at 29th March, 2022.

A. I did not ask.

Q. I put it to you that if you had ask of the price per jerry can, you would have known that what the complainant told you about the number of liters he bought was not true.

A. The complainant did not say anything about the number of liters he bought. He only said he bought fuel at a total cost of GH¢5,600.00 and same has been stolen from his vehicle's tank.

Q. So you went to the fuel station as part of your investigation and you did not ask of the price per liter and per jerry can. How then did you arrive at the total number of liters in the jerry cans in my possession and its price.

A. As we speak I do not know the number of liters in the jerry cans and do not know the total cost of the fuel that was found in your possession.

Q. I put it to you that even with the recent hike in fuel prices the amount stated by the complainant as the amount he bought the fuel is far more than the current prices of fuel at the pump.

A. I cannot tell because I do not sell fuel.

Q. I put it to you that you did not do thorough investigation in this matter.

A. I disagree with you.

From the above encounter, I have no justification not to agree with the accused that the investigator did not do a thorough investigation in this case as expected of her. I find that the investigator's answer that she went to the fuel station as part of her investigation and was told that PW1 indeed bought fuel worth GH¢5,600.00 as an afterthought and untruth, this is because nowhere in her witness statement or facts did she indicate so, neither was any of the fuel attendants brought to the court to testify to that fact. It appears to me that the investigator holds the view that once the accused is not able to produce the one who sold the diesel to him he is guilty of the offence. Unfortunately however, the law does not work that way. The accused has no duty place on him to assist the police conduct their investigation. Once it is the police that is alleging stealing against him they must prove same.

It is also quite intriguing that the investigator stated in her witness statement and facts that the accused was arrested whilst in possession of diesel worth GH¢5,600.00 yet under cross examination she indicated categorically that she does not know the total cost of the fuel that was found in the possession of the accused. This and many more contradictions and inconsistencies are what is giving me an excruciating headache of doubt as to the guilt of the accused on this charge.

In the case of **Dexter Johnson v. The Republic [2011] SCGLR 601**, Dotse JSC had this to say about the standard of proof in criminal matters and I quote:

“Our system of criminal justice is predicated on the principle of the prosecution, proving the facts in issue against an accused person beyond all reasonable doubt. This has been held in several cases to mean that, whenever any doubts exist in the mind of the court which has the potential to result in a substantial miscarriage of justice, those doubts must be resolved in favour of the accused person”.

The learned judge continued and I quote:

“I believe this principle must have informed William Blackstone’s often quoted statement that

‘Better than ten guilty persons escape than one innocent suffer’ which was quoted and relied upon by me in the unanimous decision of this court in the case of **Republic vrs Acquaye alias Abor Yamoah II, ex-parte Essel and Others [2009] SCGLR 749 @ 750**”.

In line with the above and considering the authorities listed above, I find that the prosecution has not been able to prove its case beyond reasonable doubt, and so the accused person herein, **Tahiru Jebrila** is hereby acquitted and discharged.

In the case of **Salifu v. The Republic [1974] 2 GLR 291**, Ata-Bedu J stated:

“There is no doubt that the crucial ingredient or element in a charge of stealing is dishonest appropriation.”

In the case before me, the only person whose presence in this court would have determined whether or not there was dishonest appropriation of the diesel worth GH¢5,600.00 is Aliu Mumuni, the said Aliu Mumuni, submitted a written statement to the police in which he indicated that he knew the person who sold the diesel to the accused and that he and the said seller used to work for the same company in Liberia some time ago, he also stated that the seller is now working with a construction company here in Ghana. Most importantly he indicated that he was the one who “linked” the

accused person to the seller and the two undertook the transaction and that the product was not stolen items. His presence would have assisted this court greatly in determining the issues. However, the investigator instead only took a statement from him and allowed him to vanish into thin air without giving him the opportunity to appear and testify as a witness in the case.

In the case of **Regina v. Ansere 3 WALR 388**, it was held that:

“The principle of law is that if there is one witness whose evidence would settle the case one way or another and the prosecution fails to call that witness, their case must fail since in that event they have not proved their case beyond all reasonable doubt”.

The Supreme Court in a unanimous decision in the case of **Gligah & Anor v. The Republic [2010] SCGLR 870**, per holding 5, held that:

“The Supreme Court would affirm as good law, the principles of law regarding the need for a party to call a material witness in support of its case”.

I have critically examined the whole evidence adduced and I am not convinced that the accused is guilty of the charge of stealing. As held supra, the accused person is found not guilty of the offence charged and is hereby acquitted and discharged on count one.

I will now deal with issue two i.e “whether the accused dishonestly received stolen property to wit diesel worth GH¢5,600.00 being the property of the PW1.”

Section 146 of Act 29/60 provides that, a person who dishonestly receives property which that person knows has been obtained or appropriated by a criminal offence punishable under this chapter commits a criminal offence and is liable to the same punishment as if that person had committed that criminal offence.

See Salifu & Another V The Republic (1974) 2 GLR 291. “Knowledge” refers to knowing that the goods have been stolen at the time the goods are received and not subsequent to that date.

Section 147 (1), a person commits the criminal offence of dishonestly receiving property which that person knows to have been obtained or appropriated by a criminal offence, if that person receives, buys, or assist in the disposal of the property otherwise than with a purpose to restore it to the owner. See R V Byford (1973) 2 GLR 421.

From the record it is not in dispute that the complainant had his diesel stolen from his vehicles tank on 29th March, 2022, what is in issue is whether the accused dishonestly received the said diesel.

In fact, this count by prosecution when taking in conjunction with count one is quite problematic and nerve-racking. In order to put the issues in their proper perspective I shall reproduce below the particulars of offence in both counts one and two as captured on the charge sheet respectively.

COUNT ONE

PARTICULARS OF OFFENCE

TAHIRU JEBRILA, DRIVER, AGE 34 YEARS; For that you on or before the 30th day of March, 2022 at Dambai in the Oti Magisterial District and within the jurisdiction of this Court, did dishonestly appropriated nine jerry cans of diesel valued GH¢5,600.00 belonging to one Yaw Yaro.

COUNT TWO

PARTICULARS OF OFFENCE

TAHIRU JEBRILA, DRIVER, AGE 34 YEARS; For that you on or before the 31st day of March, 2022 at Dambai in the Oti Magisterial District and within the jurisdiction of this

Court, did buy and receive nine jerry cans of diesel valued at GH¢5,600.00 the property of one Yaw Yaro which you knew or ought to have known was obtained or appropriated by means of criminal offence to wit stealing.

From the above my understanding of what prosecution is saying is that on 30th day of March, 2022, the accused stole diesel worth GH¢5,600.00 being property of the complainant (PW1), then the next day, 31st March, 2022, the same accused person bought and received (dishonestly received) the same stolen property (supra) from himself.

This clearly is unimaginable and unintelligible for want of a better word. It appears to me that prosecution is trying to dabble in guess work, by throwing series of traps around with the hope and believe that at least one trap will succeed. It is worth noting that in the particulars of offence under count two, prosecution “cleverly” omit to indicate who the accused bought and received the nine jerry cans of diesel from. I believe prosecution was fully aware of the danger associated with that disclosure.

In my respectful view the charge is most inappropriate and cannot stand in the face of the facts and evidence before this court. The accused could not have stolen and sold the same goods to himself. It is either that, the accused stole the nine jerry cans of diesel or dishonestly received same. Since the accused has already been acquitted and discharged on count one (supra) this second count most apparently stands moot.

Even assuming without admitting that this second count was properly placed, the evidence on record does not support the charge. The accused indicated that he bought the fuel from the seller at the Dambai lake side on that fateful day at about 2:45pm whilst the seller was about crossing the Volta Lake. He further indicated that he bought the fuel at the pump price of GH¢9.60 per liter and paid GH¢220.00 per jerry can, for the nine jerry cans, which sums up to GH¢1,980.00. This piece of evidence by the accused was unshaken by prosecution even during the vigorous cross examination by the prosecutor.

As stated in the authorities (supra), the key ingredient of the offence of dishonestly receiving is the proof that at the time the accused received the items he must have “knowledge” that the items he was receiving were stolen items or property.

It is very improbable and unlikely that stolen items from the community will be sold openly in same community and at such conspicuous and busy location like the lake side in broad day light and at the market price.

I have critically examined the entire record and I have not found any evidence which suggest that the accused person dishonestly received the nine jerry cans of diesel either from himself or any other person.

I find that prosecution has not been able to prove the guilt of the accused person herein on count two as well. The accused Tahiru Jebrila, is accordingly acquitted and discharge on count two.

FINAL ORDERS:

The police is hereby ordered to release the nine jerry cans of diesel to the accused person Tahiru Jebrila, forthwith.

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ALHASSAN DRAMANI, ESQ.

DISTRICT MAGISTRATE

7TH FEBRUARY, 2023.

