

**IN THE DISTRICT COURT "2" TARKWA, HELD**  
**ON WEDNESDAY THE 27<sup>TH</sup> DAY OF NOVEMBER, 2024**  
**BEFORE HIS WORSHIP ISAAC OSEI ASARE ESQ**

**CC NO. WR/TK/DC2/B8/01/23**

**THE REPUBLIC**

**VRS**

**EBENEZER BOAHENE**

**JUDGEMENT**

The accused person, a fifty-one-year-old man at the time of his arrest, was arraigned before the Court on March 1, 2023 and charge with the offence of;

*“Forgery of official document; contrary to section 158 of the Criminal Offence Act, 1960 (Act 29)”*

The facts of the case as presented by prosecution are that the accused person, somewhere in September, 2021 sold an unregistered Opel Zafira Wagon Vehicle to the complainant Felix Sam Anderson. The complainant upon purchasing the vehicle, registered same but the vehicle was later confiscated by a team of officers from the Custom Division of the Ghana Revenue Authority, Accra on the ground that the documents used for the registration of the vehicle were forged. The complainant therefore reported the matter to the Police and the accused was subsequently arrested and arraigned before the Court for the offence charged.

The accused pleaded not guilty to the charge and the prosecution, pursuant to the order of the Court, filed disclosures and after case management conference [C.M.C], led evidence in support of their case against the accused.

#### *EVIDENCE OF PROSECUTION WITNESSES*

The prosecution in support of the case, called three witnesses including the investigator in the matter. The first witness was the complainant in the matter Felix Sam Anderson (PW1), the second witness was Dominic Eyaku @ Assembly (PW2) and the third witness of the prosecution was the Police Investigator Roberta Kambire (PW3).

The summary of the evidence of the prosecution witnesses was that somewhere in September, 2021, the accused person sold an unregistered Open Zafira Vehicle to the complainant/PW1 at the price of GHC34,500.00 through PW2 and one other person called Anthony Braimah.

PW1 in his evidence stated that he after buying the vehicle from the accused, registered same as WT 887-21 and it was after the vehicle had been registered that it was confiscated by a team of officers of the custom Division of Ghana Revenue Authority. PW1 further stated that the reason given by the officers who confiscated the vehicle was that the documents used for the registration of the vehicle were forged. PW1 further stated that the officer said that they were only prepared to release the vehicle to him if he pays GH¢45,000.00 as additional duty on the vehicle. He therefore reported the matter to the Police when the accused failed to retrieve the vehicle for him.

PW3, the Police investigator in the matter, testified as the last witness for prosecution. She tendered in evidence the investigation and charged cautioned statements of the accused as Exhibits 'A' and 'B' respectively, documents from customs as Exhibits 'C' , 'C1', 'C2', 'C3' 'C4', ... to 'C10', receipts from GCB as Exhibits 'D' , 'D1', 'D2' and 'D3'. She also tendered in evidence the Police wires message and other related documents as Exhibits 'E' , 'E1', 'E2' and 'E3'. The prosecution closed their case after the evidence of PW3.

#### *ACCUSED BEING CALLED UPON TO OPEN HIS DEFENCE*

This Court, after the close of the prosecution's case, and in accordance with Sections 173 and 174 (1) of the Criminal and other offences (Procedure) Act, 1960 (Act 30), delivered a ruling in August 7, 2024, calling upon the accused to open his defence to the offence charged. The said ruling of the Court was mainly based on the presumption under Section 37 (1) of the Evidence Act, 1975 (NRC 323) and the case of GHANA PORTS & HARBOURS V. NOVA COMPANY (2007 – 2008) 1 SC GLR 806 that official duty has been regularly performed and the fact that it was the Custom Division of the Ghana Revenue Authority who declared the documents of the vehicle as having been forged.

#### *EVIDENCE OF THE ACCUSED*

The accused testified on August, 28, 2024 and stated that he is a driver and lives at Ashaman in the Greater Accra Region. According to him, he did not forge the documents of the vehicle. He stated that he bought the vehicle in early, 2021 from the Alhaji Sadick of Takoradi (now deceased) and he gave him the documents of the vehicle which was an unregistered vehicle and he confirmed the authenticity of the documents from the Tema

Custom who after confirming the chassis number from their system, released the vehicle to him. The accused further stated that he after confirming the authenticity of the vehicle's documents brought same to Nzema where the complainant expressed interest and bought same from him through one Mr. Anthony.

The accused further stated that the complainant before buying the vehicle verified the documents at DVLA Tarkwa and he, (the complainant) after buying the vehicle successfully registered same at the DVLA. According to the accused, the complainant after registering the vehicle used same for more than one year before the team of Custom officers from Accra confiscated the vehicle, claiming that the duty paid on the vehicle was less than what ought to have been paid.

The accused further stated that upon being informed by the complainant about the seizure of the vehicle, engaged a lawyer who is handling the matter for him, only for the complainant to report him to the Police to be prosecuted for an offence, he did not commit. The accused did not call any witness and therefore closed his defence after being cross-examined by prosecution.

## *EVALUATION*

The accused herein has been charged with the offence of “Forgery of Official Document contrary to Section 158 of the Criminal Offences Act, 1960 (Act 29)” and the said section states that;

*“A person who, with the intent to deceive any other person, forges a judicial or an official documents, commits a second degree felony”*

From the above provision, it is clear that the offence of forgery of an official document involves the act of creating or altering an official document with the intention to deceive or defraud another person. For the prosecution to establish the of forgery they must prove that;

- i) The accused person made, altered, or possessed the documents;
- ii) That the document is an official documents; and
- iii) That the accused had the intention to deceive or defraud [another person] by using the forged document. See the cases of R V. MENSAH [1959] GLR 314 and OKYERE & ANOTHER V. THE REPUBLIC SC (unreported case) dated 28 November, 2001.

The accused upon being called upon to open his defence has no burden to prove his innocence, but he is in accordance with Section 11 (3) of Evidence Act, 1975 (NRCD 323) to produce sufficient evidence so that a reasonable mind could have a reasonable doubt as to their guilt. See the case of BAKER & SACKY V. THE REPUBLIC; C/A, S/No H2/10/19 dated 28 May, 2020 and IBRAHIM & 3 OTHERS V. THE REPUBLIC; C/A S/NO. H2/2/201. 18 JUL 2017.

In this case, the evidence on record shows that the accused person is not the importer of the vehicle but he also bought the vehicle from one Alhaji Sadick who according to the accused, is now deceased.

The first registration document of the vehicle (Form A) which was tendered in evidence as Exhibit 'C2' shows the importer of the vehicle to be one Afua Agyewa with her Agent as Salifu Abdulai. It was this Afua Agyeiwaa who per the Form C [Exhibit 'C1'] transferred the vehicle into the name of the complainant Felix Same Anderson.

The above documents (Exhibits C1 and C2) supports the case of the accused that he did not import the vehicle and therefore has nothing to do with the payment of duty in respect of same. Alhaji Sadick who the accused claims to have bought the vehicle from, might have sold same as a dealer to the accused on behalf of its owner Afua Agyeiwaa whose name appears on the form 'A'.

The Court, considering the evidence on records, particularly the fact that it has not been demonstrated that the accused played any role in the payment of the customs duty on the vehicle; is of the view that the accused has successfully raised doubt as to his guilt. The accused per his evidence has demonstrated that he did not forge the documents used for the registration of the vehicle. If there were any problems with the documents used for the registration of the vehicle, same did not emanate from his outfit since he is not the importer of the vehicle and he did not pay the custom's clearing duty of the vehicle.

### *CONCLUSION*

This Court, by virtue of the analysis herein above made and the evidence on record, cannot convict the accused for the offence charged since he has successfully raised doubt

as to his guilt. The accused is therefore acquitted and discharged of the offence of Forgery of Official Document contrary to section 158 of Act 29.

H/W ISAAC OSEI ASARE

ESQ

DISTRICT MAGISTRATE

DISTRICT COURT (2)

TARKWA

Sgt Patrick Essien for PW/ASP Joyce Odame for Republic

J. A. Awuka Esq. for Accused