

GHANA / JUDGMENT

The Republic Vrs Asamoah [2023]

GHADC 239 (12 January 2023)

[2023] GHADC 239

COURT

District Court

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IN THE DISTRICT COURT HELD AT SEFWI JUABOSO ON THURSDAY, THE 12TH DAY OF JANUARY, 2023 BEFORE HIS WORSHIP SAMUEL ENTEE JNR ESQ. THE MAGISTRATE CC. NO.68/23 THE REPUBLIC VRS. ERIC ASAMOAH @ ISHMAEL Accused Person Present. Chief Inspector Solomon Boatri for the Republic Present.

JUDGEMENT

The Accused person has been charged with one count of stealing contrary to Section 124 (1) of the criminal offences Act, 1960 (Act 29). He pleaded not guilty to the charge. The particulars of the offence are that on 11/10/2022 Accused stole an unregistered black motorbike valued at GH¢ 8,500 the property of Abango Abobillah at Kojokrobokrom near Bonsu Nkwanta. The fact of the case are that on 11/10/2022 Accused engaged the services of the complainant who was in charge of his black motorbike, to take him to Suaboi near Dadieso. On reaching a section of the road at Kojokrobo, the Accused told Complainant to stop as his hat had fallen off. When complainant stopped the Accused pulled a pistol on him and told him to get off the motor bike and for fear of his life he obliged and Accused sped off with the motorbike. The complainant informed his colleagues and other people about the incident, and a witness in the case informed 1 | P a g e him that he had seen the motor bike parked at a store at Suaman Dadieso. The complainant went and confronted the owner of the store about the motorbike and the store owner told him that it was Accused who sold it to him at GH¢ 3,800.00. That on the same day, Accused was arrested by the Juaboso Police in a similar case so Accused was taken to Dadieso police station where the store owner identified him as the person who sold the motorbike to him. That after investigation Accused was charged with stealing and put before the court for prosecution. The prosecution called 3 witnesses to support their case against the Accused. The witnesses were; The complainant, Abobillah Agbango (PW1), Kwabena Ayisi (PW2) who is the store owner, and the investigator in the case, General Constable Gordon Annor (PW3). PW1 told the court that on the day of the incident he picked Accused on his motorbike in the morning at Bonsu Station to Suaboi where the Accused had asked him the previous night to take him in the following morning. That about 20 minutes after they set off and had just passed by Kojokrobo Accused asked him to stop as his hat had fallen off. That he slowed down and looked back but did not see

any hat on the road, and at that moment Accused pulled a pistol against his ribs and switched off the engine of the motor bike and asked him whether he liked his life or the motor bike. PW1 said he gave the motor bike to Accused and pleaded with Accused not to shoot him. That Accused took over the motorbike and turned towards the Bonus road. So he quickly ran to Kojokrobo and asked some people whether they had seen the motorbike and they said the motorbike had just passed by. That he continued to Bonsu and on the way was picked up by a motorbike and he told the rider about the incident and the rider drove him to Bonsu police station to report the incident. That later some of his colleague motorbike riders informed him that they had seen his motorbike at Dadieso. So police went and arrested the person in possession of the motorbike at Dadieso and brought him to Juaboso and the accused was also arrested and subsequently put before the court. In his defence, the Accused said PW1 was selling his motorbike and he said he would get a buyer for him. That sometime later he was directed by one Ironman at Dadieso who dealt in motorbikes and Ironman agreed to buy PW2's motorbike so he informed PW1 about it and PW1 gave the motorbike to him to sell and he sold it at GH¢ 3,800.00 to Ironman. The Accused said he gave 2 | P a g e GH¢ 3,000.00 to PW1 and promised to pay the balance of GH¢ 800 later. That he later went to Dadieso and on his return to Bonsu Nkwanta, he had a lift on a motorbike to AkosKrom but on their way, they had an accident and sustained injuries. The Accused further said he walked to a small town called Yaw Brefo and went to a store to buy water to wash blood on him due to the injuries he sustained. That a certain man arrested him on suspicion that he was the one they were looking for as there was a report that someone had stolen a motorbike and was given a hot chase and had crashed the motorbike and ran into the bush and since he had bruises on his hands then he was that person. So he was put in a room and later a police car came and conveyed him to Juaboso police station and was subsequently charged and put before the court for stealing a motorbike. But he did not steal the motorbike. It was rather a transaction business he did with PW1, by selling PW1's motorbike for him. However, because he did not pay the balance of GH¢ 800.00 that was why PW1 reported him to the police. The Accused person said he had 2 witnesses, the man Egya Yaw who gave him a lift on the motorbike and they had the accident, and his girlfriend, Sallah, whom he visited at Dadieso the night before the incident the following morning. The Accused however, failed to locate where the said witnesses live for the police to inform them to appear in court to give evidence to support the Accused. The only issue for determination is whether or not Accused is guilty of the offence of stealing. Section 124 (1) of Act 29 under which Accused is charged with stealing provides that " A person who steals commits a second felony". Section 125 of Act 29 defines stealing as " A person steals who dishonestly appropriates a thing of which that person is not the owner". In the case of the Republic Vs. Halm and Another [1969] CC 155, CA, it was held that the three elements which require proof in charge of stealing are:

1. That the person charged must not be the owner of the thing allegedly stolen
2. That he must have appropriated the thing

3. That the appropriation must have been dishonest 3 | P a g e So for the prosecution to succeed, they must prove the 3 element of stealing stated above. On the first element or ingredient the evidence before the court clearly indicated to the court that the accused was not the owner of the motorbike. On the second element, PW2 told the court that the Accused brought the unregistered black motorbike to his shop at Dadieso and sold it to him at GH¢ 3,800.00 which he paid after custom officials had verified the motorbike papers. But he was later informed by some people that the motorbike was a stolen property and was subsequently arrested by the police and identified Accused person who sold the motorbike to him. Accused confirmed that he sold the motorbike to PW2. But he denied that he stole the motorbike during the cross examination of PW1. He rather said it was a business transaction he had with PW1 to sell the motorbike for PW1. So PW1 gave the motorbike to him and he sold it at GH¢3,800.00 and gave GH¢3,000.00 to PW1; however, PW1 denied it. Again, during the cross examination of PW3 Accused denied that he stole the motorbike. In his investigation caution statement the police on 20/10/22, which was tendered in evidence by PW3 the Accused objected to its admission on the ground that he gave the statement under duress but after a mini-trial, the court found that Accused gave the statement voluntarily, and the court admitted it in evidence as Exhibit A. In Exhibit A, Accused stated that he went to Bonsu Nkwanta lorry station in the morning on the day of the incident and hired the complainant who doubled as an Okada rider to take him to Dadieso but the complainant said he could only take him to Suaboi a suburb of Bonusu Nkwanta. That he agreed and they proceeded to Suaboi but whilst going the complainant parked on a section of the road and told him that he wanted to ease himself. So he waited for him on the motorbike and when complainant entered the bush, he immediately rode the motorbike away to Suaman Dadieso and sold it at GH¢3,800.00. In Exhibit A, the Accused never stated anywhere that he had a business transaction with PW1 based on which PW1 gave the motorbike to him to sell it for him. Accused also never stated that he gave GH¢3000.00 to complainant from the sale of the motorbike. The only thing Accused 4 | P a g e denied was pulling a gun on the complainant. The court is of the view that if indeed there was a business transaction between Accused and complainant for Accused to sell the motorbike which he did and gave part of the money to complainant, Accused would have stated it in Exhibit A even if it is assumed that he was tortured and gave Exhibit A under duress (which as earlier stated the court found Accused gave Exhibit A voluntarily). It is the opinion of the court therefore that Accused's evidence in court which contradicted his statement in Exhibit A was an afterthought. The said contradiction makes Accused's evidence in court not credible so the court will not attach any weight to it. Exhibit A in part corroborated PW1's evidence that Accused ran away with his motorbike. I therefore accept the corroborated evidence of the prosecution that Accused took complainant's motorbike away. Section 122 of Act 29 explains acts which amount to appropriation. Subsection 2 provides that an appropriation of a thing means "any moving, taking, obtaining, carrying away, or dealing with a thing, with the intent that a person may be deprived of the benefit of the ownership of that thing, or of the benefit of the right or interest in the thing, or in its value or proceeds, or part of that thing". The evidence before the court showed that Accused took the motorbike

away with the intent that the complainant might be deprived of the benefit of the ownership of the motorbike as he went and sold it to PW2 at Suaman Dadieso and caused him some economic loss. On the evidence therefore I find that Accused appropriated the motorbike. On the 3rd element, PW3 tendered the genuine documents covering the motorbike in evidence as Exhibit D, and the fake documents Accused gave to PW2 as Exhibit E. Section 120 of Act 29 defines dishonest appropriation as “An appropriation of a thing is dishonest

- (a) if it is made with an intent to defraud, or (b) if it is made by a person without a claim of right and with a knowledge that the appropriation is without the consent of a person who is owner of the thing.” 5 | P a g e The evidence before the court showed that Accused appropriated the motorbike with intent to defraud by providing fake documents to cover the motorbike. Again, since the motorbike did not belong to Accused, he had no interest in it and therefore had no claim of right to it. The evidence also established that Accused knew that the complainant, Pw1, did not consent to the appropriation of the motorbike as he wanted the court to believe. On the evidence therefore, I find that the appropriation of the motorbike by Accused was dishonest. Since the prosecution have established or proved all the 3 elements of the offence of stealing, I find that they have proved their case against Accused beyond reasonable doubt. I therefore find that Accused is guilty of the offence of stealing. Accordingly, Accused is hereby convicted on the offence of stealing contrary to Section 124 (1) of Act of 29. Accused is a first offender and a young man of 24 years old. So the court will give him a second chance. Consequently, Accused is sentenced to pay a fine of 500 Penalty Units or in defaults 24 months IHL. Restitution order is hereby made for the motorbike the police retrieved from Accused to be handed over to the complainant, Agbango, who is the owner. SGD::: SAMUEL ENTEE JNR ESQ THE MAGISTRATE 6 | P a g e

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Prepared on 29 October 2026 · Esheria