

GHANA / JUDGMENT

Republic Vrs Gbafa [2023]

GHADC 531 (26 June 2023)

[2023] GHADC 531

COURT

District Court

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IN THE DISTRICT COURT, DZODZE HELD ON MONDAY THE 26TH DAY OF JUNE, 2023 BEFORE HIS WORSHIP NELSON DELASI AWUKU DISTRICT MAGISTRATE. Case No. B7/06/23 THE REPUBLIC VRS ISRAEL GBAFA

JUDGMENT

PARTIES COMPLAINANT PRESENT ACCUSED PRESENT REPRESENTATION CHIEF INSPECTOR HAMID MOHAMMED FOR PROSECUTION PRESENT

BACKGROUND

The accused was arraigned before this Court on 20th October, 2022 on a charge of stealing contrary to Section 124(1) of the Criminal Offences Act, 1960 (Act 29). BRIEF FACTS The facts as attached by the Prosecution stated that on the 8th of October, 2022 the complainant upon the request of the accused granted him the permission to use his Haojue Motorbike for business and return same in the evening of that same day. 1 | P a g e The prosecution stated that the accused person picked an unknown passenger from Dzodze towards Deme but upon reaching a section of the road the passenger hit the accused and forcibly took the motorbike from him. The Prosecution stated that the accused reported the incident to the police but upon investigations, it was discovered that he took the motorbike to Togo on the said day and informed some persons there that he brought it from Accra instead of Dzodze. The prosecution stated that the accused insisted in his cautioned statement that the motorbike was snatched from him by the unknown passenger but after investigations was arraigned before the court for prosecution. PLEA OF ACCUSED The accused pleaded not guilty to the offence when the charge and particulars of the offence were read and interpreted to him and was admitted to bail. Witness statements of witnesses of prosecution together with charge statement and investigation caution statement of the accused were filed by the prosecution and served on the accused for trial. THE CASE OF PROSECUTION The prosecution called three witnesses, including the complainant and the investigator to prove his case. PW1 stated that on the 8th of October, 2022 he gave his motorbike with registration number M-VD-21 742 to the accused to work for the day. 2 | P a g e PW1 stated

that he went to a funeral on the said day and while at the funeral received a phone call from the accused who informed him that the motorbike had been snatched from him near the Vehem Mawunyo School at Dzodze by some unknown persons. PW1 stated that he proceeded to meet the accused at the scene to confirm the report and went with the accused to the police station to make a complaint. PW1 stated that while in the house, the accused stated that he has the contact number of the person who snatched the motorbike but when they tried the contact it could not go through so they informed the police that the accused is complicit. PW1 stated that they went to the house of the accused in Togo in search of the motorbike and while there, they received bad testimonies about the character of the accused and were informed by people in the neighborhood that he brought the motorbike to Togo and informed them that he brought it from Accra. PW1 stated that, the sports bag the accused claimed to have taken from the person who snatched the bike from him was identified by persons in Togo to be his own bag which contained a knife, a pair of black trousers, body spray, sponge and a pomade. In her evidence in support of the case of prosecution, PW2 stated that on the alleged day of the incident, the accused came to their house to request for the motorbike and because PW1 was going for a funeral, he gave it to him on condition that he will return it the same day with a full tank of fuel. PW2 stated that, at about 4:00pm on that day, after they had returned from the funeral, PW1 noted that he had missed several calls from the accused earlier. 3 | P a g e PW2 stated that, the accused called again and when PW1 picked, he requested that he meets him at Russia Junction at Dzodze and that there was an emergency. PW2 stated that, PW1 rushed to the place and returned later with the accused and invited his three brothers John, Simon and Agbesi Atise to come and listen to the narration of the accused. PW2 stated that, the accused informed them that he picked a passenger earlier to the hand of God church and took the number of the said passenger with an agreement to come and pick him later. PW2 stated that according to the accused, he later picked the said passenger from the point towards Deme and while on the way, the passenger snatched the motorbike from him. PW2 stated that after the narration of the accused, PW1 took him to the police station to make a report. PW2 stated that a day after the incident, they went to the residence of the mother of the accused in Togo where they received a negative report about the character of the accused and were also informed that he brought the motorbike to Togo and informed his uncles there that he brought it from Ho. DEFENCE OF ACCUSED 4 | P a g e In his evidence the accused stated that on the 8th October, 2022, he went to watch television in the house of the complainant when the complainant informed him that he will be attending a funeral the following day. The accused stated that the complainant asked him to use the motorbike to work for him for on the said day and return it in the evening. The accused stated that he took a passenger to Badza in Togo and because that place is not very far from where his wife and children are, he decided to pay them a visit before coming back to Dzodze to continue his work. The accused stated that around 3:30pm that day, he took a passenger to the Hand of God church in Dzodze who requested that he waits for him but he declined the request and took his number with an agreement to come and pick him later. The accused stated that, he missed a call later from the passenger but while riding around Dzeshime market, the passenger saw him and requested that he takes him to the St. Anthony Hospital. The accused stated that after dropping him off, the passenger requested that he takes him from the St. Anthony Hospital to Deme. The

accused stated that upon reaching a section of the road on the way to Deme, the passenger hit him with his elbow and took the motorbike away when he fell off. The accused stated that he called to inform the complainant about the development and they both went to the police station to report the incident. 5 | Page THE LAW Burden of Proof In a criminal action the burden of producing evidence when it is on the prosecution as to any fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind will find the existence of the facts beyond reasonable doubt. See Section 11(2) of the Evidence Act, 1975 (NRCD 323) and the cases of Kingsley Amankwah (a.k.a Spider) v. The Republic [2021] DLSC10793 at pages 25-26 per Dotse JSC and Frimpong alias Iboman v. The Republic [2012] 1 SCGLR 297. The extent of the onus on the accused on the other hand is provided by section 11(3) of the evidence Act 1975 which states; “In a criminal action, the burden of producing evidence, when it is on the accused as to a fact the converse of which is essential to guilt, requires the accused to produce sufficient evidence so that on the totality of the evidence a reasonable mind could have a reasonable doubt as to guilt”. See also the case of COP v. Antwi [1961] GLR 408. Stealing A person steals who dishonestly appropriates a thing of which that person is not the owner. See section 125 of the Criminal Offences Act, 1960 (Act 29). To successfully prove a case of stealing against a person in our law, three elements have to be established which include the fact that;

- a) the person is not the owner of the thing allegedly stolen
 - b) that he appropriated the thing and
 - c) that the appropriation was dishonest. See the cases of Ampah v the Republic [1977] 2 GLR and Mensah v the Republic [1978] GLR 404. 6 | Page Under section 122 (2) (a) of the Criminal Offences Act, appropriation is defined as follows; “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 or of the benefit of the right or interest in the thing or in its value or proceeds or part of that thing”. In sum, there cannot be appropriation within the meaning of section 122 of Act 29, unless;
 - a) there is evidence that the accused not being the owner of the thing stolen, took or moved or obtained the thing or did some act in respect of the thing;
 - b) that the act whether it consisted of moving, taking, obtaining or dealing with the thing in any other manner was intended by the accused to deprive some person of the benefit of his ownership or the benefit of his right in its value or proceeds or any part thereof. Under section 120 (1) (a) of the Criminal Offences Act, an appropriation of a thing is said to be dishonest if made with an intent to defraud. An intent to defraud on the part of an accused person is therefore an essential ingredient in the proof of a stealing case. Intent to defraud under section 16 of the Criminal Offences Act, 1960 (29) is defined to mean an intent to cause any gain capable of being measured in money or the possibility of that gain to a person at the expense or to the loss of any other person.
- ANALYSES AND EVALUATION OF EVIDENCE
The principle in our law is that in a charge of stealing, there must be evidence that the

accused actually appropriated the thing and did so with an intention to cause some 7 | P a g e economic loss to the owner whether certain or uncertain. See the case of *Amoako v. Commissioner of Police* [1961] GLR 134 SC. From the evidence of the witnesses of prosecution and the accused, the motorbike was willingly given to the accused by the complainant for work on the said day to be returned on same day after close of work. The basis of his prosecution seems to arise from the lack of believe in the claim by the accused that the motorbike was snatched from him. The doubt appears to have been exacerbated by the revelations witnesses of the prosecution claim to have had from neighbours of the accused in his house in Togo. Having established that the motorbike was willingly given to him by the owner, dishonesty and intention to defraud could only be inferred from the subsequent conduct of the accused. The defence of the accused is that, the motorbike was snatched from him whiles using it for business, the purpose for which the complainant released it to him. The evidence of PW1 and PW2 are premised on narrations they allegedly heard about the accused from some persons in Togo. Apart from the fact that the persons alleged to have made those claims against the accused were not in court to allow him the opportunity to cross examine them, the nature of that evidence does not render it sufficient enough to constitute the basis for a conviction. 8 | P a g e The evidence of both PW1 and PW2 was also inconsistent on where exactly the people in Togo had informed them the accused stated he got the motorbike from? Whereas PW1 stated that the people informed them that the Accused stated that he brought the motorbike from Accra, PW2 stated that the people informed them the accused stated that he brought the motorbike from Ho.

CONCLUSION

The charge levelled against the accused requires a proof that what he alleges to have occurred never did happen and that instead of returning the motorbike to the owner he was still holding on to it or disposed of it to another person without the consent of the complainant. The above concern as to whether what the accused claimed happened actually did occur or whether there have been subsequent developments based on his conduct and actions from which it can be inferred that there has been dishonest appropriation were not addressed by the evidence from prosecution. Since the complainant is the one who gave out the motorbike to the accused, the accused had a duty to ensure its safety and return same to the owner in lieu of their agreement. In the absence of sufficient evidence to convict the accused for stealing, the complainant can take a civil action to recover the motorbike from the accused. On the basis of the above reasoning, the accused is acquitted and discharged on the charge brought against him. NELSON DELASI AWUKU 9 | P a g e MAGISTRATE 10 | P a g e

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