

GHANA / JUDGMENT

Republic Vrs Opoku [2023] GHACC 280 (16 March 2023)

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16 March 2023

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CORAM: HIS HONOUR FESTUS FOVI NUKUNU SITTING AT THE CIRCUIT COURT OF GHANA
HELD AT OLD TAFO ON THURSDAY 16TH MARCH, 2023 CCN. 17/23 THE REPUBLIC VRS
MICHEAL YAW OPOKU

JUDGMENT

The accused person was charged with stealing, contrary to Section 124(1) of the Criminal Offences Act, 1960 (Act 29) and causing unlawful damage contrary to section 172(1) (b) of the same Act 29. The particulars of offence in Count 1 are that Micheal Yaw Opoku, mechanic, aged 22 years on the 31st day of January, 2023 at Abaawa Ruth, Old Tafo, Kumasi in the Ashanti Circuit and within the jurisdiction of this court, did steal an unregistered black Ford Fusion saloon car valued GH¢ 95,000.00 the property of Daniel Kwadwo Nyarko @'Obiba'. The particulars of offence in Count 2 are that Micheal Yaw Opoku, mechanic, aged 22 years on the 31st day of January, 2023 at Abaawa Ruth, Old Tafo, Kumasi in the Ashanti Circuit and within the jurisdiction of this court, you intentionally and unlawfully caused damage to a quarter glass of a Chevrolet car valued GH¢ 2,000.00 the property of Tuou Robert. The accused person elected to speak Twi and after the charges were read and explained to him in Twi, he pleaded guilty simpliciter to the two charges. The brief facts according to prosecution are that complainant in this case Akwasi Amoako is auto – mechanic living at Old Tafo, Kumasi whilst the accused Micheal Yaw Opoku is an apprentice of the complainant. For some time now, the accused has not been frequenting the shop due to some suspicious action of his. During the month of October 2022, one Daniel Kwadwo Nyarko @ 'Obiba' sent his an unregistered Ford Fusion saloon car, black in colour for repairs. On 31st January, 2022 at about 8:00 am, the complainant reported to work and realized that a Chevrolet car parked at the shop in which he keeps his keys of the shop had been broken into and the Ford Fusion car keys together with the car were nowhere to be found. Complainant Page 1 of 4 immediately suspected the accused person and therefore lodged complainant with police at Tafo Pankrono. Whilst investigations were ongoing, police had a tip – off at Effiduase that the accused had sent the said Ford Fusion car to a mechanic shop to dismantle same. Effiduase police were informed

leading to the arrest of the accused. The accused was escorted with the car to Tafo – Pankrono and was handed over to the police. The accused admitted the offences in his investigation cautioned statement which was volunteered in the presence of independent witness. The accused was charged with the offences and arraigned before this Honourable Court. As accused person was not represented, it was incumbent on the court to ensure that he understood the plea of guilt and its effects and also that his plea was made voluntarily. To that end, I asked him the following questions: By court: Do you understand the process so far? By accused: I understand everything. By court: Are you educated? By accused: I am educated up to JHS level By court: Were you forced to plead guilty? Were you promised to plead guilty so that the court will favour you? By accused: No. My plea is voluntary. By court: From the answers provided by the accused, it was evident that he made the plea voluntarily and he understood same. Accordingly, I convicted him on his plea on the two charges. Pre - sentence hearing By court: Any plea of mitigation? By accused: I pray to court to forgive me. By prosecutor: Accused is not known to the law. However, the accused stole from his master who engaged him to learn apprenticeship. By court to the Accused: How old are you? By accused: I am 22 years old. By court to the Prosecutor: Has the car been retrieved? By prosecutor: Yes. By Court to the accused: Has the accused paid for the damage caused to the Chevrolet car? By accused: No. I have not paid. Page 2 of 4 Sentencing: In punishing the accused person, the Court will consider the mitigating and aggravating factors espoused in the cases of Quarshie v The Republic (2018) JELR 66200 (CA) and Frimpong alias Iboman v. the Republic Criminal Appeal No. J 3/5/2010 delivered on 18th January 2012. In FRIMPONG ALIAS IBOMAN VRS THE REPUBLIC [2012] 1 SCGLR 297 at 328, the first and young offenders are to be given the second opportunity to reform and play their role in society as useful and law - abiding citizens. They are normally treated leniently compared to second or habitual offenders. See also the dictum of Kpegah J. (as he then was) in the case of Impraim v. The Republic [1991] 2 GLR 39-47 in which he stated that in considering the sentence to be given to an accused either upon first trial or during appeal, the courts had to take into consideration ‘the gravity of the offence taking into account all the circumstances of the offence. In this wise, regard must be had to such matters as the age of the offender, his health, his circumstances in life, the prevalence of the offence, the manner or mode of commission of the offence — whether deliberately planned and executed — and other like matters.’ Considering the fact that the convict had pleaded guilty at the earliest possible stage which is the first date of arraignment in court thereby saving the State the time and expense of going through a trial to establish his guilt beyond reasonable doubt. By his early plea, the convict had saved the State from the expenses of a trial. Convict is also a first time offender. He is also young. At 22 years, this is his first brush with the law and it is in the interest of the reformatory element of the criminal justice system that when persons have had their first brush with the law, they be given an opportunity at reformation. From the facts and what transpired in this court, the convict did not benefit from the crime. The car was retrieved after the convict had been arrested. Notwithstanding the mitigating factors, the accused’s conduct was unacceptable. It is obvious that the accused wanted to put his master into trouble. To destroy a customer’s car to get access to the key and stole another customer’s car is the height of wickedness perpetrated by this apprentice against his master. The accused also failed to fix the damage he had caused to one of the cars belonging to his master’s customer. Upon these considerations, I decided to impose a

lenient custodial sentence on the convict. That would give him a chance at reformation and an opportunity to return into society at a fit and healthy age in order to contribute his quota as a citizen, towards the development of the country. Page 3 of 4 I must state that per our law, the first charge against the accused could attract a prison term of up to 25 years whilst the second charge could attract a prison term of up to ten (10) years. See Section 296(2) and (5) of the Criminal Procedure Act, 1960 (Act 30). The convict spent two weeks in lawful custody before the day of sentencing. Article 14 (6) of the 1992 Constitution reads: “Where a person is convicted and sentenced to a term of imprisonment for an offence, any period he has spent in lawful custody in respect of that offence before the completion of his trial shall be taken into account in imposing the term of imprisonment”. Having taken into consideration the two weeks the convict spent in custody, I sentence him to eight - month term of imprisonment and a fine of two hundred and fifty (250) penalty units or in default serve additional twelve months’ imprisonment in hard labour on count 1, and four – month term of imprisonment in hard labour and a fine of one hundred (100) penalty units on count 2. In default of payment of fine in count 2, the accused shall serve additional four (4) months’ imprisonment in hard labour. The sentences are to run concurrently. The accused is further ordered to pay GH¢ 3,000.00 as compensation to the complainant to defray the cost of fixing the damage caused to the Chevrolet car. SGD H/H FESTUS FOVI NUKUNU (CIRCUIT COURT JUDGE) DETECTIVE INSPECTOR S. K. OPPONG FOR THE REPUBLIC PRESENT CONVICT: YOU HAVE A RIGHT OF APPEAL AGAINST THE SENTENCE Page 4 of 4

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