

GHANA / JUDGMENT

REPUBLIC VRS ATSU (B7/44/2022) [2023] GHADC 1156 (28 March 2023)

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IN THE DISTRICT MAGISTRATE COURT, HELD AT AGBOZUME ON TUESDAY THE 28TH DAY OF MARCH, 2023 BEFORE HIS WORSHIP IDDRISU ISSAH THE DISTRICT MAGISTRATE: COURT CASE NO. B7/44/2022 THE REPUBLIC VERSUS DZADE PAUL ATSU

J U D G M E N T: The accused person herein, Dzade Paul Atsu was arraigned before this court on the charge of stealing. He pleaded not guilty. Brief facts from the prosecution are as follow: Raphael Cudjoe aged 51 years is the complainant whereas Dzade Paul aged 69 years is the accused person. They are both residents of Amukoe in Agbozume. In the second week of December, 2021, the complainant posted the obituary of his late father, Emmanuel Cudjoe at the E.P. Junction, Agbozume. On the 28th of December, 2021 the complainant realized that the 1 | P a g e obituary had been removed and taken away. The complainant searched the vicinity and found the poster tied and lying in front of the accused person's entrance. The complainant reported the matter to the police. The prosecution invited two witnesses to its case: Raphael Cudjoe as the PW1 and the police investigator, Detective Corporal Sam Richard as the second witness (P22). The first prosecution witness stated that he posted the obituary of his late father at Agbozume E.P Junction and the council building on the 28th of December, 2021 he could not find the posters at the locations. He mounted search for them and finally found them in front of the accused person's door. The posters cost him GHC100.0. The police investigator (PW2) stated that this matter was reported to the station by the compliant. He invited the accused person or investigation after which he took various statements from them accused person. The statement of the complainant was marked as exhibit A. The caution statement and charge statement of the accused person were marked as exhibits B and C respectively. The investigator under cross examination gave responses including the following: Q. A. Q. A. Q. A. Q. I put it to you that I did not steal the banners. You did, since you did not seek the consent of the complainant. I suggest to you that where the banner was fixed, was not good. That is not true. I did not need permission to move the banner as a member of the funeral planning committee. You were not a member. I put it to you that, I was taken as the assistant father, for the funeral committee. 2 | P a g e A. Q. A. It is not true. I put it to you that Christian Nenenyo appointed me as his assistant. That is not true. The accused person stated that the charge leveled against him was not true because he was appointed

by the head of family of the deceased Mr. Christian Nenem the family head made him an assistant concerning the planning of the deceased's funeral. According to the accused person, on the last week of December, 2021 he saw two posters of the deceased were removed from where they were posted. One was at Agbozume Area Counsel and the other at the E.P. School Junction. He took the two posters to his house with the intention to re-fix and bring them back to the places of post. However he had distress call from Togo that his child was ill. He left the posters in his house and went to Togo. On the next day he sent the posters back to the exact places they fell from. He thought that the charge against him was due to misinformation because he was assisting in the same funeral. The accused person invited Christian Nenem as a witness. He stated that he is the head of Adzibbli family to which the deceased and the complainant belong. According to the witness, he asked the accused person to sit with him and assist in the funeral arrangements. They placed posters at the vantage points. Later the complainant informed him that he had reported the accused person for stealing the posters. He immediately confronted the accused person. The accused person explained that his intention was only to repost the obituary at their position but for the distress call to him. He ask the head of family pleaded with the complainant to withdraw the matter for settlement but he refused. 3 | P a g e The court found as its findings of fact from the adduced evidence the following.

- (1) The accused person took and kept the obituary posted by the complainant.
- (2) The complainant was not aware of the role of the accused person in their funeral arrangement.
- (3) The head of family of the complainant engaged the accused person to help in the funeral activities involving the late father of the complainant. With these facts of the case, the relevant question or determination is whether or not the accused person stole the obituary. Generally the proof required of the prosecution in a criminal charge is sound to be proof beyond reasonable doubt. In section 22 of the Evidence Act 1975, NRCDC 323, the Act states as follows: "In a criminal action, a presumption operates against the accused as to a fact which is essential to guilt only if the existence of the basic facts give rise to the presumption are found or otherwise established beyond reasonable doubt, and in the case of a reputable presumption, the accused need only raise a reasonable doubt as to the existence of the presumed fact." The question before the court is whether or not the accused person stole the obituary. Section 125 of the Criminal Offences Act 1960. (Act 29) states that: "A person steals who dishonestly appropriates a thing of which that person is not the owner. Indeed the accused person appropriated the obituary which was a property belonging to the complainant and his family. The unanswered question is whether there was dishonesty 4 | P a g e in the conduct of the accused person. Section 120 (1) (b) of Act 29 on dishonest appropriation provides as follows: "An appropriation of a thing is dishonest (b) if it is made by a person without claim of right and with a knowledge or belief that the appropriation is without the consent of a person for whom that person is trustee or who is owner of the thing or that the appropriation would, if known to the other person, be without the consent of the other person." The prosecution argued that the accused person stole the obituary from the

places to which they were posted. The accused person explained that the found them detached and he took them for safe keeping and to be refixed. The prosecution under cross examination questioned his intention. He explained that he had the authority and backing from the head of family of the complainant to do so, as an assistant to him. The matter would have ended here when the head of family came to testify in support of the case of the accused person. However it appeared that the complainant did not recognize the trust relationship between the head of family and the accused person in dealing with the obituary. It therefore suggest that the accused person had no claim of right nor consent of the complainant to have taken the obituary away. In the circumstance the court considered the conduct of the accused person as having been done without the consent of the complainant. He is therefore convicted on the charge. Given the nature of the offence the accused person is sentenced to a fine of thirty (30) penalty units or in default three months imprisonment. 5 | P a g e The head of family of the complainant is ordered to pay half of the fine. (SGD). H/W IDDRISU ISSAH DISTRICT MAGISTRATE 28/03/2023 Boa/* 6 | P a g e

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