

GHANA / JUDGMENT

Republic Vrs Richard Nii Armah [2023] GHACC 224 (21 April 2023)

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21 April 2023

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IN THE CIRCUIT COURT '5' HELD IN ACCRA ON FRIDAY THE 21ST DAY OF APRIL 2023 BEFORE HER HONOUR CHRISTINA EYIAH-DONKOR CANN (MRS.) CIRCUIT COURT JUDGE CASE NO: D21/18/2023 THE REPUBLIC VRS RICHARD NII ARMAH QUAYE RULING ON SUBMISSION OF NO CASE TO ANSWER

INTRODUCTION

On the 10th August, 2022 the accused person Richard Nii Armah Quaye was arraigned before this court and charged with the offence of engaging in domestic violence to wit: physical abuse contrary to sections 1 (b) (i) and 3 (2) of the Domestic Violence Act, 2007 (Act 732). The accused person pleaded not guilty to the offence preferred against him. Therefore, the prosecution assumed the burden of proving his guilt. At the close of the prosecution's case on the 16th March, 2023, learned counsel for the accused person was of the firm belief that no case has been made against the accused person to require him to open his defence. In view of this, the accused person per his learned counsel indicated to the court his decision to file a submission of no case in this matter. In the case of C.O.P. V. Osei Yaw Akoto [1964] GLR 231, @ 232, Akainyah, J. was of the view that an accused person or his legal representative has a right to make a submission of no case at the close of the prosecution's case. According to Akainyah, J, it is a fundamental principle of law that a person charged with an offence before a court of law has a duty to make it appear to the court that no charge has sufficiently been made against him to require an answer from him. Such an accused person can only do so through a submission of no case. He described this principle as a 'time-honoured practice', which Section 173 of Act 30 of 1960 has not taken away, when that section is given its proper meaning. Yaw Appau J.A in the case of Atsu Charan Kole v The Republic Criminal Appeal No. H2/5/2008, delivered on 5th June 2018, also posited thus: "I am of the view that it is inappropriate for a court or a judge to refuse to hear or listen to an accused person or his legal representative who wants to make a submission on any subject at all before the court, including a submission of no case, since the paramount duty of every court is to ensure that justice reigns at the end of the day. The court is fully assisted to achieve this if all parties in litigation, both in criminal and civil trials, are given the opportunity to dilate on the law, at any stage of the proceedings, for the consideration of the court." It is also instructive to note that the Practice Direction (Disclosures and Case Management in Criminal Proceedings) dated the 30th

October, 2018 section 5 (2) (a) provides as follow: “...at the close of the case for the Prosecution, the Court shall, on its own motion or on a submission of no case to answer, give a reasoned decision as to whether the Prosecution has, or has not led sufficient evidence against the Accused as to require him/her to open his defence.” From the tenure of the above-mentioned section of the Practice Direction (supra), this court would have given a reasoned decision on whether the 2 prosecution has, or has not, led sufficient evidence against the accused person as to require him to open his defence whether he make a formal submission or not. Learned counsel for the accused person’s prayer was granted. He accordingly filed a submission of no case to answer on behalf of the accused person on the 3rd April, 2023. Learned counsel for the accused person in his submission contended that, there is no case made against the accused person for which reason he should be called upon to answer and as such the accused person should be acquitted and discharged. Although, the Republic was served with a copy of the submission of no case to answer, it failed to file any response. THE CHARGE The charge preferred against the accused person and on the basis of which he stands trial in this instant case is as follow: “STATEMENT OF OFFENCE ENGAGING IN DOMESTIC VIOLENCE TO WIT: PHYSICAL ABUSE: CONTRARY TO SECTIONS 1(b) (i) and 3(2) OF THE DOMESTIC VIOLENCE ACT, 2007 (ACT 732). PARTICULARS OF OFFENCE RICHARD NII ARMAH QUAYE: ENTREPRENEUR: On 29/07/2022 at about 4:00 p.m. at Dansoman in the Greater Accra Circuit and within the jurisdiction of this court, you packed the personal belongings of your wife Joana Quaye including: bags, jewelry, amongst others to her mother’s house at Mamprobi 3 and offloaded same on the compound of the said house, an act you did to deprive her of access to adequate clothing, rest and shelter.” BRIEF FACTS The case of the prosecution is as follow: “Complainant Joana Quaye aged 38 is a house wife and lives at Dansoman whiles the accused person Richard Nii Armah Quaye aged 38 is an entrepreneur and lives at Dansoman. The complainant and the accused person are married couple and are blessed with three children. Both were living together at Dansoman until about a year ago when they had a misunderstanding and the accused person moved out of the house that he cannot live under the same roof with the complainant. On 29/07/2022, complainant visited her mother in their family house at Mamprobi. On same day at about 4:00 p.m., the accused broke into complainant’s room at Dansoman knowing that she has gone out then packed all of her belongings including jewelries and bags into a truck with the help of some other men, went and dumped them on the compound of complainant’s family house. The complainant who became shocked and surprised at her husband’s behaviour made a follow up to her house in the company of her two sisters Rebecca Coffie and Barbara Coffie and to be more surprised, the main gate to the matrimonial home was locked up with a chain and a padlock and met five men who harassed and intimidated them at the gate and denied the complainant of access to the house and mention to her that they were acting on the orders of the accused person who instructed them not to allow her into the house. The complainant who could not have adequate access to her house to rest reported the matter to 4 Police/DOVVSU/AR. The accused person was arrested and a caution statement obtained from him and he admitted the offence. After investigation, he was charged with the offence to appear before this honourable court.” THE LAW ON SUBMISSION OF NO CASE Section 173 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) provides as follow: “173. Where at the close of the evidence in support of the charge, it appears to the court that, a case is

not made out against the accused sufficiently to require him to make a defence; the Court shall, as to that particular charge, acquit the accused.” The above provision means that at the close of the prosecution’s case, it is within the court’s discretion to decide whether a prima facie case has been made against the accused person in respect of the offence tried. If the court finds that the prosecution has not made out a sufficient case against the accused person to warrant calling on the accused person to open his defence in respect of the charge, the charge may be dismissed and the accused person acquitted and discharged. In the case of *The State vrs Ali Kassena* [1962] GLR 44 SC, the Court held at page 148 thus: “... a submission that there is no case to answer may properly be made and upheld (a) when there has been no evidence to prove an essential element in the alleged offence; (b) when the evidence adduced by the Prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable 5 that no reasonable tribunal could safely convict on it. Apart from these two situations, a tribunal should not in general be called upon to reach a decision as to a conviction or acquittal until the whole of the evidence which the other side wishes to tender has been placed before it. If, however, a submission is made that there is no case to answer, the decision should depend not so much on whether the adjudicating tribunal (if compelled to do so) would at that stage convict or acquit but on whether the evidence is such that a reasonable tribunal might convict. If a reasonable tribunal might convict on the evidence so far laid before it, there is a case to answer.” In the case of *Tsatsu Tsikata vrs The Republic* [2003-2004] SCGLR 1068 SC, it was also held at holding 5 thus: “5. On a submission of no case, the judge’s function was essentially to determine whether there was a genuine case for trial, viz. whether there was any genuine factual issue that could properly be resolved only by a finder of fact because they might reasonably be resolved in favour of either party. The enquiry had to focus on the threshold question whether the evidence presented sufficient disagreement to require a full trial or whether it was so one-sided that one party must prevail as a matter of law. Therefore, where reasonable minds differ as to the import of the evidence presented in a submission of no case, that motion should be upheld. If on the other hand, there could be but one and only one reasonable conclusion favouring the moving party, even assuming the truth of all that the Prosecution has to say, the judge must grant the motion. Where the submission was rejected and the case went to trial, it was then that the judge or jury as appropriate, being the trier of facts, would be called upon to 6 determine whether or not the guilt of the accused person had been proved beyond reasonable doubt.” In the case of *Atsu v. The Republic* [1968] GLR 716 @ 719 CA. the court also held that: ‘... As a general rule, evidence from the defence is not taken until the Court has held that the Prosecution has established a prima facie case. This is based upon a well-known principle that it is the Prosecution that has an onus to prove the guilt of the person they accuse of an offence, and not the accused person who should establish his innocence. The accused person should therefore not show his hands until the need arises.” Indeed, a prima facie evidence is nothing other than evidence that can lead to the conviction of the accused person if the accused person leads no evidence to rebut the presumption raised in it. It is therefore evidence which on its face or first appearance without more, could lead to a conviction, if the accused person fails to give a reasonable explanation to rebut it. It is evidence that the prosecution is obliged to lead if they hope to secure a conviction of the accused person charged. It therefore stands to reason that the paramount consideration in deciding whether a prima facie

case has been made or not is whether the prosecution has proved all the essential ingredients or pre-requisite of the offence charged. No prima facie case is made where the prosecution was unable to prove all the essential ingredients of the offence charged. Even if one of the ingredients is not proved, the prosecution's case fails and no prima facie case is made. A 7 person is pronounced guilty only when the evidence led by the prosecution in respect of the charge satisfied the standard of proof required by law and that is proof beyond reasonable doubt. In the case of *Asamoah & Anor v The Republic* [2017-2018] 1 SCGLR 486 (edited by Albert Adaare), Adinyira (Mrs.), JSC indicated that the underlying factor behind the principle of submission of no case to answer is that an accused person should be relieved of the responsibility of defending himself when there is no evidence upon which he may be convicted. In the above-mentioned case, the Supreme Court also reaffirmed its earlier decision in *Tsatsu Tsikata* case (supra) as well as other previous cases and at pages 492-494, the Supreme Court restated and clarified the following grounds under which a submission of no case may be upheld by a trial court as follows:

- (a) where there has been no evidence to prove an essential element of the crime charged;
- (b) where the evidence in support of the prosecution's case has been discredited as a result of cross examination;
- (c) where the evidence is manifestly unreliable that no reasonable tribunal could safely convict on it; or
- (d) where the evidence adduced by the prosecution is evenly balanced in the sense that, it is susceptible to two likely explanations, one consistent with guilt, and the other with innocence. *Kofi alias Buffalo v The Republic* [1987-88] 1 GLR 250 8 *Gyabaah v The Republic* [1984-86] 461 C.A *Moshie Alias Adama v The Republic* [1977] 1 GLR 186-190 *Apaloo v The Republic* [1975] 1GLR 156 The learned Jurist Sir Dennis Dominic Adjei J.A. in his recent publication *Criminal Procedure & Practice in Ghana*, Third Edition (page 304) stated as follows: "...The underlying factor in fair trial is that an accused is presumed innocent until he/she is proved or has pleaded guilty. Where the Prosecution fails to prove an essential element of the offence charged and the court calls upon the accused to open its defence, the court breaches a constitutional provision by in substance saying that the accused person shall open his/her defence to prove his innocence. Therefore, the Courts are duty-bound to ensure that whenever prosecution fails to establish a prima facie case against the accused at the close of the case of the prosecution, it stands to reason that the Prosecution has failed to meet the constitutional requirement imposed on it by paragraph (c) clause 2 of Article 19 of the Constitution which provides thus:
 - (2) A person charged with a criminal offence shall –
 - (c) be presumed to be innocent until he is proved or has pleaded guilty." THE BURDEN ON THE PROSECUTION In our criminal jurisprudence, it has always been the duty and obligation of the prosecution, from the outset of the trial, to prove and substantiate the 9 charge levelled against the accused person to the satisfaction of the Court unless in a few exceptions. Under the Evidence Act, 1975 (NRCD 323), the burden of proof is divided into two parts, that is the

burden of persuasion or the legal burden and the evidential burden or the burden to produce evidence. The burden of persuasion is provided for under section 10 (1) of the Evidence Act, 1975 (NRCD 323) as follow: “10 (1) For the purposes of this Decree, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court”. The burden of producing evidence is also provided under section 11(1) of the Evidence Act, 1975 (NRCD 323) thus: “11 (1). For the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him in the issue”. Again, in criminal proceedings, what constitutes the facts in issue depends on any relevant presumptions and the allegations involved. In the present case for example, where the accused person is charged with domestic violence to wit: physical abuse, the allegation may be that the accused person on the 29th July, 2022 physically assaulted PW1 by depriving her of access to adequate clothing, shelter, and rest. Since the prosecution is asserting the above facts constituting the ingredients of the offence of domestic violence to wit: physical abuse, it is incumbent on it to establish that belief of the accused person’s guilt in the mind of this Court to the requisite degree prescribed by 10 law. In other words, the prosecution has the burden of persuasion to establish the guilt of the accused person. When the prosecution has adduced the evidence to establish the essential ingredients of the offence of domestic violence to wit: physical abuse which will cumulatively prove the guilt of the accused person, the court at the end of the case of the prosecution will have to decide whether the prosecution has discharged the obligation on it to establish the requisite degree of belief in the mind of the court that the accused person in fact and indeed is guilty of the offence of domestic violence to wit: physical abuse. Except in few instances, the measuring rod or the standard of proof for determining that the evidence adduced by the prosecution has attained the requisite degree is provided under sections 10 (2) and 22 of the Evidence Act, 1975 (NRCD 323). Sections 10 (2) and 22 of the Evidence Act, 1975 (NRCD 323) provide as follows: “10 (2). The burden of persuasion may require a party to raise a reasonable doubt concerning the existence or non-existence of a fact or that he establishes the existence or non-existence of a fact by the preponderance of the probabilities or by proof beyond reasonable doubt.

22. 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 that give rise to the presumption are found or otherwise established beyond a reasonable doubt, and thereupon, in the case of a rebuttable presumption, the accused need only raise a reasonable doubt as to the existence of the presumed fact”. 11 If this Court decides that the prosecution has failed to prove each essential ingredient of the offence of domestic violence to wit: physical abuse beyond reasonable doubt at the end of the prosecution’s case, the accused person will have to be acquitted for he will be deemed to have “no case to answer”. But if this Court decides that each essential ingredient has been proved beyond reasonable doubt, then the accused person will have to be called upon to put up his defence, because there will be an established presumption of guilt (a prima facie case) which he must rebut, if he does not

want the presumption to stay, thus rendering him liable for a conviction. To use the language of section 11 (1) of the Evidence Act, 1975 (NRCD 323), the accused person will have on him the burden of introducing sufficient evidence to avoid a ruling against him that he is guilty of the offence charged. In other words, he has the burden of producing evidence. The apex court in the case of *Asante No (1) v The Republic* [2017-2020] I SCGLR 143-144 explained the burden on the prosecution as follows: “Our law is that when a person is charged with a criminal offence it shall be the duty of the prosecution to prove his guilt beyond reasonable doubt, meaning the prosecution has the burden to lead sufficient admissible evidence such that on an assessment of the totality of the evidence adduced in court, including that led by the accused person, the court would believe beyond a reasonable doubt that the offence has been committed and that it is the accused who committed it. Apart from specific cases of strict liability offences, the general rule is that throughout a criminal trial the burden of proving the guilt of the accused person remains with the prosecution. Therefore, though the accused person may testify and call witnesses to explain his side of the case where at the close of the case 12 of the prosecution a prima facie case is made against him, he is generally not required by the law to prove anything. He is only to raise a reasonable doubt in the mind of the court as to the commission of the offence and his complicity in it except where he relies on a statutory or special defence. See: Sections 11(2) 13(1), 15(1) of the Evidence Act, 1975 (NRCD 323) and *COP v Antwi*

[1961] GLR 408.” However, proof beyond a reasonable doubt does not mean beyond a shadow of doubt as was stated by Lord Denning in the case of *Miller vs. Minister of Pensions* (1974) 2 ALL ER 372 AT 373 thus: “It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice.” This dictum emphasizes that proof beyond reasonable doubt does not mean proof beyond every shadow of doubt or proof beyond every possibility. Lord Justice of the King’s Bench from 1822-1841, Charles Kendal Bushe also explained reasonable doubt thus: “...the doubt must not be light or capricious, such as timidity or passion prompts, and weakness or corruption readily adopts. It must be such a doubt as upon a calm view of all the whole evidence a rational understanding will suggest to an honest heart the conscientious hesitation of minds that are not influenced by party; preoccupied by prejudice or subdued by fear.” See also: *Osei v. The Republic* [2002] 24 MLRG 203, *CA Abodakpi v. The Republic* [2008] 2 GMJ33 *Republic v. Uyanwune* [2001-2002] SCGLR 854 13 *Dexter Johnson v. The Republic* [2011] 2 SCGLR 601 *Frimpong A.K.A. Iboman v. Republic* [2012] 1 SCGLR 297 Again, it must be emphasized that the proof by the prosecution can be direct or indirect. It is direct when the accused person is caught in the act or has confessed to the commission of the offence. Thus, where the accused person was not seen committing the offence, his guilt can still be proved by inference from surrounding circumstances that indeed he committed the said offence. See: *Logan vs Lavericke* [2007-2008] SCGLR 76 Headnote 4 *Dexter Johnson vs The Republic* [2011] 2 SCGLR 601 AT 605 *State vs Anani Fiadzo* (1961) GLR 416 SC *Kamil vs The Republic* (2010) 30

GMJ 1 CA Tamakloe vs The Republic (2000) SCGLR 1 SC Bosso vs The Republic (2009) SCGLR 470 The guilt of the accused person is sufficiently proved if the tribunal of fact is convinced that he committed the offence though there remains a lingering possibility that he is not guilty. Having established the requisite burden that the prosecution ought to discharge and the burden on the accused person, it is very important to note that one fundamental legal principle pertaining to criminal trials in our jurisdiction as contained in paragraph (c) of clause (2) of article 19 of the Constitution is that: "19 (2) A person charged with a criminal offence shall- 14

- (c) be presumed to be innocent until he is proven or has pleaded guilty." The Supreme Court also held on the presumption of innocence in the case of Okeke vs The Republic [2012] 2 SCGLR 1105 at 1122 per Akuffo JSC as follows: "...the citizen too is entitled to protection against the state and our law is that a person accused of a crime is presumed innocent until his guilt is proved beyond reasonable doubt as distinct from fanciful doubt." An accused person therefore in a criminal trial or action, is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt, he is entitled to a verdict of not guilty. Bosso vs The Republic (2009) SCGLR 470 SUMMARY OF EVIDENCE BY THE PROSECUTION The prosecution called four (4) witnesses in support of its case. The case for the prosecution was presented mainly by the complainant, Joana Quaye as the first prosecution witness (PW1) and supported largely by Barbara Cofie and Rebecca, the younger sisters of PW1 as the second and third prosecution witnesses (PW2 and PW3) and Detective Inspector Edmond Ayim stationed at DOVVSU Ministries, Accra who investigated the case as the fourth prosecution witness (PW4). The prosecution also tendered in evidence three (3) Exhibits namely: the caution statement of the accused person, the charged statement of the accused person and photograph of PW1's personal belongings in "Ghana must go" bags as Exhibits "A", "B" and "C" respectively. 15 PW1, JOANA QUAYE She lives at Dansoman together with the accused person who is her husband and their three children. They have been married for 12 years and they were living together until about a year ago when they had an issue and the accused person told her that he cannot live under the same roof with her. According to PW1, the accused person packed his belongings one day when she had gone out and since then all their communication has been that of verbal abuse. The accused person uses an errand boy or their first child in terms of their upkeep and other related issues. On the 27th July, 2022, the accused person sent his errand boy to pick up their three children to his mother's house at Mamprobi close to the Polyclinic. On the 29th July, 2022, she went to her family house at Mamprobi and she realized that she left her purse so she went back and took it. At about 4:00 p.m. when she was getting ready to go home, some men in a Kia truck came and started throwing check bags on the ground just in front of her family house and they told her that it was the accused person who instructed them to deliver them to her. She opened the bags and they contained her personal belongings. She was surprised because she locked her bedroom, the main door and used a remote to lock the main gate. She quickly made a follow up to her matrimonial house in the company of her two sisters Rebecca Cofie and Barbara Cofie and upon getting to the house, she saw about 5 men surrounding the main gate and

they prevented her from entering the house. When she attempted to go into the house, they held her wrist and pushed her away. The men told her that the accused was the one who instructed them not to allow anyone into the house. The men quarrelled with them for some time before they left yet, she did not get access to her matrimonial house. She observed that a padlock and a long metal chain has been used to lock up the main gate. She reported the case to police DOVVSU Accra Regional Office and submitted her statement. PW2, BARBARA COFIE She is trader. She lives at Mamprobi Bamboi with her parents and siblings. PW1 is her elder sister who lives in her matrimonial house at Dansoman with her children. On the 27th July, 2022, PW1 came to their family house at Mamprobi Bamboi and told her that her children have been taken to their grandmother's house so she is left alone and wants her company in her house during the nights that the children would be away. She obliged and followed PW1 for two days but on 29th July, 2022 between 3:00 p.m. and 4:00 p.m., they were in their family house when they heard a knock on the main gate. Her elder sister Rebecca Cofie went to the gate and returned to say that the person at the gate wants to see PW1 and that the person said the accused person sent them to bring something to her. Before PW1 and her elder sister could come out of the room, the person at the gate opened the gate ajar and some men started throwing bags from a KIA truck packed outside unto the compound. Rebecca Cofie also started reloading the bags but the men kept throwing them onto the compound. The men hurriedly offloaded all the bags and even left some on the road. Two of the men sped off while the other two being the driver and the conductor also went into the KIA truck. They all made a follow up to PW1's matrimonial house at Dansoman and upon getting to the house, she saw about five men surrounding the main gate and they prevented PW1 from entering the house by holding her hand and pushing her back. The 17 men told them that the accused person was the one who gave them orders not to allow anyone into the house and so PW1 could not get access to her matrimonial house. She gave her statement to the police. PW3, REBECCA COFIE She is a trader. She lives at Mamprobi Bamboi with her parents. PW1 in this case is her elder sister who lives in her matrimonial home at Dansoman with her three children. On the 29th July, 2022, PW1 came to the family house where she lives. On the same day at about 4:00 p.m., she was cooking when she heard a knock at the main gate. She went and checked and it was a young man who told her that it was the accused person who sent them to bring some things to their house. She told the young man to wait while she goes and calls PW1. She returned to the gate with PW1 and to her surprise, the young man had opened the gate and a KIA truck fully loaded was already on the compound and they were offloading the contents. She loaded the contents back into the truck and it turned into a quarrel. PW1 opened the bags and they contained her personal belongings. According to PW3, PW1 was surprised because she had locked the doors to her bedroom, the main door and used a remote to lock the main gate. Eventually, the men were able to offload all and left two bags on the road and left. Quickly, together with PW1 and PW2, they went to PW1's matrimonial house at Dansoman. When they got to PW1's matrimonial house, there were some men around the gate who prevented her from entering same. This turned into a quarrel and the men told them that it was the accused person who gave them orders not to allow anyone into the house. A padlock and a long chain had also

been to lock up the main gate. She submitted her statement to the police. 18 PW4, DETECTIVE INSPECTOR EDMOND AYIM He is an investigator and he is stationed at DOVVSU Accra Regional Office. He knows PW1 and the accused person in this case. On the 29th of July, 2022, he was the available investigator on duty when PW1 reported a case Domestic Violence to wit: depriving another person of access to adequate clothing, shelter and rest against the accused person. On the 30th July, 2022, he obtained a statement from PW1 and she told him that the accused person had pack her personal belongings from her matrimonial home at Dansoman and dumped them in her parent's house at Mamprobi in her absence. He also obtained witness statements from PW2 and PW3. On the 30th July, 2022 he visited the crime scenes in the company of PW1 where PW1 first took him to a 3 bedroom self-contained house at Mamprobi and pointed to about 20 pieces of check bags containing her personal belongings packed in the hall of same house and the witnesses confirmed that the bags were thrown on the compound before they packed them into the hall. PW1 further led them to the house at Dansoman Exhibition but police could not have access into the house. It was a gated storey building and the main gate was under a metal chain locked with a padlock. On the 8th August, 2022 the accused person was arrested. After investigation, he charged the accused person. ANALYSIS OF THE CHARGE OF DOMESTIC VIOLENCE TO WIT: PHYSICAL ABUSE Under sections 1 (b) (i) and 3 (2) of the Domestic Violence Act, 2007 (Act 732): "1. Domestic violence means engaging in the following within the context of a previous or existing domestic relationship: 19

- (b) specific acts, threats to commit, or acts likely to result in
- (i) physical abuse, namely physical assault or use of physical force against another person including the forcible confinement or detention of another person and the deprivation of another person of access to adequate food, water, clothing, shelter, rest, or subjecting another person to torture or other cruel, inhuman or degrading treatment or punishment; "3. Prohibition of domestic violence
- (2) A person in a domestic relationship who engages in domestic violence commits an offence and is liable on summary conviction to a fine of not more than five hundred penalty units or to a term of imprisonment of not more than two years or to both." Domestic relationship is defined under section 2 (1) of the Domestic Violence Act, (Act 732) as follows:
- 2. (1) A domestic relationship means a family relationship, a relationship akin to family relationship or a relationship in a domestic situation that exists or has existed between a complainant and a respondent and includes a relationship where the complainant (a) is or has been married to the respondent; (b) lives with the respondent in a relationship in the nature of a marriage even if they are not or were not married to each other or could not or cannot be married to each other; 20 (c) is engaged to the respondent, courting the respondent or is in an actual or perceived romantic, intimate, or cordial relationship not necessarily including a sexual relationship with the respondent;

- (d) and respondent are parents of a child, are expecting a child together or are foster parents of a child; (e) and respondent are family members related by consanguinity, affinity or adoption, or would be so related if they were married either customarily or under an enactment or were able to be married or if they were living together as spouses although they are not married; (f) and respondent share or shared the same residence or are co-tenants; (g) is a parent, an elderly blood relation or is an elderly person who is by law a relation of the respondent; (h) is a house help in the household of the respondent; or (i) is in a relationship determined by the court to be a domestic relationship.” The court in determining whether there is a domestic relationship between the complainant and the respondent may have regard to:
- (a) the amount of time the persons spend together,
 - (b) the place where that time is ordinarily spent,
 - (c) the manner in which that time is spent, and
 - (d) the duration of the relationship. See: Domestic Violence Act, 2007 (Act 732), section 2(1). A person is said to be in domestic relationship where: 21 (a) the person is providing refuge to a complainant whom a respondent seeks to attack, or (b) the person is acting as an agent of the respondent or encourages the respondent. See also Domestic Violence Act, 2007 (Act 732), section 2(2). In order to ground a conviction, the prosecution would have to prove beyond reasonable doubts the following: ii. That there was a previous or existing domestic relationship between PW1 and the accused person. ii. That the accused person on the 29th July, 2022 physically assaulted PW1 by depriving her of access to adequate clothing, shelter and rest. ANALYSIS OF THE EVIDENCE TO PROVE THE CHARGE OF DOMESTIC VIOLENCE TO WIT: PHYSICAL ABUSE I will at this juncture deal with the first issue which is whether or not there was a previous or existing domestic relationship between PW1 and the accused person. To sustain this charge, the prosecution is required to provide evidence beyond all reasonable doubt that there was a previous or an existing domestic relationship between PW1 and the accused person. A person cannot be said to have committed the offence of domestic violence where there has never been a previous domestic relationship or an existing domestic relationship between the complainant and the offender. PW1 stated in her testimony that the accused person is her husband and that they lived together in their matrimonial home at Dansoman with their three 22 children until about a year ago when they had a misunderstanding for which reason the accused person packed his belongings and left the matrimonial home. The accused person in his caution statement (Exhibit “A”) also stated that PW1 is his wife and that they lived together at Dansoman with their three children before he temporarily relocated to East Legon due to some issues that he had with PW1 and that he moved back to the matrimonial home at Dansoman to live with PW1 and his children after the property at East Legon which he used as a collateral for a loan was foreclosed. From the totality of the evidence led by each of the prosecution witnesses together with Exhibit “A”, this court finds as a fact the following: i. ii. that the PW1 and PW2 are still husband and wife; that they have three children; iii. that PW1, the accused person

lived together in their matrimonial home together with their three children until about a year ago when the accused person temporarily relocated to his other property at East Legon due to a misunderstanding between PW1 and himself; and iv. that the accused person moved back to the matrimonial home at Dansoman to live with PW1 and his children after the property at East Legon which he used as a collateral for a loan was foreclosed. I am therefore convinced that the prosecution has proved beyond reasonable doubt that there is an existing domestic relationship between PW1 and the accused person and I hold same. 23 I will now deal with the second issue of whether or not the accused person on the 29th July, 2022 physically assaulted PW1 by depriving her of access to adequate clothing, shelter and rest. PW1 testified that on the 29th July, 2022, she went to her family house at Mamprobi and about 4:00 p.m. when she was getting ready to go home, some men in a Kia truck came and started throwing check bags on the ground just in front of her family house and they told her that it is the accused person who instructed them to bring them to her. According to PW1, she opened the bags and they contained her personal belongings. She continued that she was surprised because she locked her bedroom, the main door and used a remote to lock the main gate. PW1 testified further that she quickly made a follow up to her matrimonial house in the company of PW2 and PW3 and upon getting there, she saw about five (5) men surrounding the main gate who prevented her from entering the house and when she attempted to go into the house, they held her wrist, pushed her away and told her that the accused person was the one who instructed them not to allow anyone into the house. It is also the evidence of PW1 that they quarreled with the men for some time but she did not get access to her matrimonial home. She also noticed that a padlock and a long metal chain has been used to lock up the main gate to the matrimonial house. PW2 corroborated the evidence of PW1 that on 29th July, 2022 she was at their family house together with PW1 and PW3 when some men who claimed that the accused person sent them, threw some bags which 24 contained PW1's belongings from a Kia Truck unto their compound. PW1 further corroborated the evidence of PW1 that together with PW1 and PW3, they all made a follow up to PW1's matrimonial house at Dansoman and upon getting there, they saw about five men surrounding the main gate to PW1's matrimonial home who prevented PW1 from entering the house by holding her hand and pushing her back. PW3 also corroborated the evidence of PW1 that PW1 could not get access to her matrimonial house. PW3 also corroborated the evidence of PW1 and PW2 that on the 29th July, 2022, the accused person instructed some gentlemen who came to their house at Mamprobi Bamboi and offloaded the personal belongings of PW1 which were in "Ghana Must go" bags from a Kia truck unto their compound and left. PW3 further corroborated the evidence of PW1 and PW2 that when they went to PW1's matrimonial home at Dansoman, there saw some men around the gate who prevented PW1 from entering her matrimonial home and told PW1 that the accused person instructed them to do so. PW3 also corroborated the evidence of PW1 that a padlock and a long chain had been to lock up the main gate to PW1's matrimonial home. There was further corroboration of the evidence of PW1 by PW4 to the effect that when he went to the scene of crime at Dansoman, the main gate had been locked with a metal chain and a padlock. The accused person also in his caution statement (Exhibit "A")

given to the police on the 8th August, 2022 when the matter was fresh in his mind corroborated the evidence of PW1 that he lived together with PW1 and their three children at Dansoman and that he temporarily relocated to East Legon when PW1 started locking him out but he had no option than to move back to the house at Dansoman where PW1 and his children lived because the bank ejected him from the East Legon property which he had earlier on used as a collateral for a loan. The accused person continued that because of the actions and attitude of PW1, there was no way that they could live together in the same house, so when he moved back into his house at Dansoman, he packed PW1's things, everything into a van and sent a couple of boys to go and unpack them into another three bedroom house which he acquired two years ago for PW1's parents, PW1 and his children. From the totality of the evidence led by each of the prosecution witnesses together with Exhibit "A", this court further finds as a fact the following: i. that it is the accused person who packed PW1's belongings into a truck and sent some boys to go and unpack same into the three bedroom house at Mamprobi Bamboi on the 29th July, 2022; and ii. that the accused person locked the matrimonial home with a chain and padlock and instructed some men to stand at the main gate thereby preventing PW1 from having access to same on the 29th July, 2022. Furthermore, from the evidence on record, PW2 stated on one hand that PW1's belongings were thrown into the compound and into the house on another hand, that the three bedroom house at Mamprobi is a family house in one vein and also that she did not say that the Mamprobi house is a family house. Undoubtedly there is a conflict in the evidence of the second prosecution witnesses, but in the opinion of this court it is not a crucial or decisive contradiction. 26 In the Criminal Law in Ghana page 128 and 129, P. K. Twumasi explained the law concerning discrepancies in the case of the prosecution in the following words: "It is not unusual for witnesses who were present at the commission of a crime to give evidence which is not free from discrepancies. This is only natural because the ability to observe, describe or to memorize an event may differ from person to person. Where there are discrepancies (or inconsistencies or contradictions in the testimonies of the prosecution witnesses, it is the duty of the judge to direct himself or the jury or assessors to the discrepancies and to tell them that such discrepancies are not fatal to the prosecution's case unless they go to the very root of the matter in issue. A discrepancy in the case of the prosecution is fatal only when it cannot be reconciled with the rest of the evidence or when it is material or goes to the root of the matter in issue." See: Mensah vs The State [1963] 1 GLR 26. The learned author however added that where the contradictions are irreconcilable, the accused must be acquitted. In this instant case, my examination of the evidence of the second prosecution witnesses reveals no such irreconcilable contradictions. Whether or not the three bed room house at Mamprobi Bamboi is a family property or rented for PW1's parents by the accused person and whether or not PW1's belongings were thrown into the compound of the Mamprobi house or into the Mamprobi house are unimportant. The discrepancies in the evidence adduced by PW2 does not go to the root of the matter in issue for which reason the accused 27 person must be acquitted. This court will ignore the contradiction as relatively unimportant. Moreover, the accused person has already stated in his caution statement (Exhibit "A") that he packed PW1's things, everything into a van and

sent some boys to go and unpack them into the three bedroom house at Mamprobi. Excerpts from the accused person's caution statements are as follows: "I was living together with Joana Quaye and our 3 children in my house at Dansoman. She started locking me out of the house and also blocking me out of my own house. She also later started making false accusations against me as long as I continued living in the house with them. To avoid her traps I temporarily relocated from the Dansoman house to another house at East Legon. But recently a person I used my East Legon property as collateral has moved me out of the house for defaulting on my loan. This means that I have no option than to move back into my own house in Dansoman where my kids and their mother is living. Because of how actions and attitude there is no way the two of us can live together in the house so I moved into my Dansoman house, packed her things, everything into a van and sent a couple of boys to go and unpack them in another 3 bedroom house I had acquired two years ago for her parents and herself and the kids. So all her belongings were sent into the furnished 3 bedroom house in Mamprobi so she could live there whiles I also live in my Dansoman house peacefully." PW1 admitted that the three bedroom house at Mamprobi Bamboi was rented for her parents by the accused person. 28 The following dialogue ensued between counsel for the accused person and PW1: "Q. The house in Mamprobi that you testified about is a three (3) bedroom house, is that correct? A. That is correct my lord. Q. And it is the accused person in this court who rented that three (3) bedroom house, is that correct? A. My lord, that is correct. The accused person rented the place for my parents because he built a house for his parents." It is instructive to note that whilst learned counsel for the accused person posited that the three bedroom house was rented for PW1, the accused person also claimed in his caution statement (Exhibit "A") that he acquired the three bedroom house at Mamprobi Bamboi for PW1, his children and PW1's parents. Counsel for the accused person asked the following question under cross-examination: "Q. I am putting it to you that the house in Mamprobi which is a three

- (3) bedroom house was rented for you? A. That is not true my lord. The accused person rented the place for my parents and they have lived in it from 2018 to date and I have never slept in the Mamprobi house before. Before my belongings were brought to my parents' house at Mamprobi, I was living in my matrimonial home together with the accused person and our children and for that reason, I couldn't leave to go and stay in that house." 29 Excerpts from the accused person's caution statement (Exhibit "A") are as follows: "... So I moved into my Dansoman house, packed her things, everything into a van and sent a couple of boys to go and unpack them in another 3 bedroom house I acquired two years ago for her parents and herself and the kids." Secondly, whilst the accused person claimed in his caution statement (Exhibit "A") that he rented the three bedroom house at Mamprobi for PW1, his children and PW1's parents, counsel for the accused person on the other hand sought to create the impression that PW1 took over the property at Mamprobi Bamboi by force and put her parents in same. Counsel for the accused person asked PW1 the following questions under cross-examination: "Q. I am further putting it to you that the house at Mamprobi is one of the properties standing in the name of the accused person which you took over? A. My lord,

that is not so because the accused person discussed it with me and he rented the place for my parents. Q. I am again putting it to you that, you put your parents in the Mamprobi property and not the accused person? A. My lord, that is not so. As I stated earlier, the accused person and I had a discussion and we decided to rent that Mamprobi property for my parents. Therefore I can say that we both rented the property for my parents.” 30 From the above dialogues, this court further finds as a fact that the accused person rented the three bedroom house for PW1’s parents only and not for PW1, her children and PW1’s parents. Learned counsel for the accused person further submitted rather forcefully that PW1 was never deprived of access to adequate clothing, shelter and rest because all her personal belongings were packed and sent to the Mamprobi house and that PW1 lived in the three bedroom house at Mamprobi until she was moved to another three-bedroom house. Unfortunately, this court disagrees with such a submission and it seeks to demonstrate why. Firstly, this court admits that PW1 was not denied access to adequate clothing because according to her, all her personal belongings are dumped in the Mamprobi house and as such she had access to them but from the evidence on the record together with the exhibits, PW1 was denied access to adequate shelter and rest. Again, from the evidence on the record, the accused person had the criminal intent to deprive PW1 access to adequate shelter and rest in her matrimonial home at Dansoman when he on the 29th July, 2022:

- a. packed PW1’s personal belongings in her absence unto a truck and instructing some men to go and unpack them in PW1’s parent’s house at Mamprobi Bamboi; b. locked the main gate to the matrimonial home with a chain and a padlock because he knew that PW1 had the remote control to the gate of the matrimonial house; and
- c. put some men at the gate to prevent PW1 from getting access to her matrimonial home. 31 If the accused person had no intent to deprive PW1’s access to shelter and adequate rest, he would not have put men at the gate on the 29th July, 2022 to deprive PW1 access to her own matrimonial home and also lock the said gate to the matrimonial house with a padlock and chain knowing very well that PW had a remote which she could use to enter the said matrimonial house. It is also instructive to note that this court on the 29th August, 2022 had to order the accused person to get a three bedroom accommodation for PW1 and the children within ten (10) days and further ordered the accused person to check PW1 and the children into a three star hotel for those ten days because PW1 and the children slept on the floor in PW1’s parents’ rented accommodation at Mamprobi and same were compiled by the accused person. If PW1 had not been deprived adequate shelter and rest by the accused person, his own counsel wouldn’t have prayed this court on the 29th August, 2022 to give him ten (10) days to look for a suitable accommodation for PW1 and the children. Furthermore, from the evidence on record, PW1 and her children have lived in the matrimonial house at Dansoman even after the accused person rented the Mamprobi property for PW1’s parents. Even before PW1’s belongings were sent to her parents’ house at Mamprobi, she was living in her matrimonial house together with their three children. It is also instructive to note that even after the accused person temporarily relocated to East Legon, PW1 and her children still lived in the matrimonial house at Dansoman. Why didn’t

the accused person relocate PW1 and their children to the Mamprobi property immediately he rented same? Your guess 32 is as good as mine. The reason why the accused person could not relocate PW1 and the children to the Mamprobi property immediately he rented same is because he rented same for PW1's parents only. It is further instructive to note that it was after PW1 was denied access to adequate shelter and rest in her own matrimonial house on the 29th July, 2022 that she went to temporarily live with her parents, sisters, nieces and nephews in the three bedroom house at Mamprobi. You can imagine the inconvenience caused to PW1 and her children. On a thorough perusal of the charge, facts, and on a full and careful consideration of the evidence on the record, the exhibits, the analysis and the applicable laws, it is the ruling of this court that the prosecution succeeded beyond reasonable doubt that in proving that, the accused person on the 29th July, 2022 deprived PW1 access to adequate shelter and rest when he packed her belongings and dumped them in her parents' house at Mamprobi Bamboi. It is therefore the ruling of this court that having regard to the charge, the facts, the evidence adduced at the trial in proof of the charge, the analysis and the laws enunciated above, this court is of the firm opinion that the prosecution has led sufficient evidence beyond reasonable doubt against the accused person in respect of the offence of domestic violence to wit: physical abuse contrary to sections 1 (b) (i) and 3 (2) of the Domestic Violence Act, 2007 (Act 732). In other words, it is the finding of this court that prima facie evidence has been established against the accused person in respect of the offence of domestic violence to wit: physical abuse contrary to sections 1 (b) (i) and 3 (2) 33 of the Domestic Violence Act, 2007 (Act 732) and this court proceeds to invite the accused person to provide an explanation to avoid being convicted.

CONCLUSION

In the light of the above charge, facts, evidence on the record, analysis and laws enunciated above, the State succeeded at the close of its case to make a case against the accused person and the accused person ought to be called upon to answer by way of opening her defence. Accordingly, the submission of no case filed on the 3rd April, 2023 on behalf of the accused person is accordingly dismissed. CHIEF INSPECTOR OPOKU ANIAGYEI FOR THE REPUBLIC PRESENT BAFFOUR GYAWU ASHIA HOLDING THE BRIEF OF SEAN NSAFOAH POKU WITH FOR THE ACCUSED PERSON PRESENT (SGD) H/H CHRISTINA EYIAH- DONKOR CANN (MRS.) (CIRCUIT COURT JUDGE) 34

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Prepared on 27 October 2026 · Esheria