

GHANA / JUDGMENT

REPUBLIC VRS KWADWO DARKO (B1/16/2024) [2024] GHACC 317 (21 October 2024)

COURT
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21 October 2024

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IN THE CIRCUIT COURT, MPRAESO, EASTERN REGION, BEFORE HER HONOUR MRS ADWOA AKYAAMAA OFOSU, CIRCUIT COURT JUDGE ON MONDAY, THE 21ST OF OCTOBER, 2024

B1/16/2024 THE REPUBLIC V KWADWO DARKO & 6 ORS

..... TIME: 10:10 ACCUSED PERSONS:
CHIEF INSPECTOR BEATRICE LARBI FOR THE PROSECUTION PRESENT JOHN NDEBUGI FOR
THE ACCUSED PERSONS PRESENT RULING – OBJECTION TO THE TENDERING OF
PHOTOGRAPH IN EVIDENCE This is a case in which the accused persons have been charged with
four counts of offences. Count one is ‘Conspiracy to commit crime to wit causing P a g e 1 | 5
unlawful damage” contrary to sections 23(1) and 172 of the Criminal Offences Act, 1960 Act (29)
and counts two three and four with “causing unlawful damage’ contrary to section 172 of Act 29.
On the 11th day of July, 2024, No 7005 Dt/PW Corporal Dorothy Agyemang (PW4), the investigator
in the instant case and the last witness of the prosecution, mounted the witness box to testify.
Before her witness statement could be adopted as her evidence - in - chief, counsel for the
accused persons objected to the tendering of Exhibit A, A1 and A2 on the ground that they were
not authentic hence inadmissible. Counsel submitted that none of the said exhibits is dated on
the face of it and does not disclose where the exhibits were taken and so this court is unable to
determine the date when these exhibits were taken and where they were taken for purposes of
such legal proceedings. He cited the following cases in support of his submission.

1. Okudjeto Ablakwa v. Attorney General [2012] SCGLR
2. Logs and Lumber v. Oppong [1977] GLR 263 to 282
3. Selormey v. The Republic [2001-2002], GLR 144
4. Nortey v. African Institute of Journalism and communication & Others [2013-2014] 1 SCGLR
at 703 The documents in contention here are photographs purporting to show gunshot holes
on the chief’s palace (Exhibit A), the alleged damage caused P a g e 2 | 5 to the roofing of the

palace (Exhibit A1) and the photographs of a burnt vehicle (Exhibit A2). The authentication and identification of documents are provided for under sections 136 to 162 of the Evidence Act 1975 (NRCD 323) Section 136 of NRCD 323 provides that: “where the relevancy of evidence depends upon its authenticity, so that authentication or identification is required as a condition precedent to admission, that requirement is satisfied by evidence or other showing sufficient to support a finding that the matter in question is what its proponent claims” Section 139 of NRCD 323 further provides that: “Authentication or identification may be by testimony that a matter is what its proponent claims” Here, the testimony on oath of PW4 is that the investigator and other personnel from the unit including the District Commander visited the crime scene in the company of the complainant and found several gunshots on the palace building, the roofing sheets being damaged by gunshots, canopies found damaged with clubs and an unregistered pickup vehicle also found burnt into ashes and scrubs and same were photographed by him for evidential purposes. Behind the said exhibits, it is indicated that they were taken by Detective Sergeant Ebenezer Antwi on 1st April, 2023. P a g e 3 | 5 Counsel for the accused persons referred to the case Okudjeto Ablakwa v. Attorney General supra where Brobbey J.S.C dealt with the authenticity of official document which is provided for under section 162 of N.R.C.D 323. It is clear from sections 136 to 162 that various documents have different modes of authentication and the authentication of the document in the Okudjeto Ablakwa case supra being an official writing is different from the authentication of the instant exhibits which are photographs taken by an individual. Since PW4 has given testimony as to what the document is supposed to be, it is my view that section 139 of NRCD 323 has been complied with and so the said photographs can be admitted in evidence. What the court will have to do after the admission of the said exhibits into evidence is to assess their probative value. In the Okudjeto Ablakwa case supra Brobbey JSC laid down how such assessment ought to be done. He states that; “In order to assess the probative value of this exhibit, there are three factors to be considered. They are the issue of its source or proper custody, the connection between the exhibit and the disputed property and the consequence of tendering that document” Assessing the probative value in my view can only be done when the exhibit is in evidence. It is therefore up to counsel for the accused persons to cross examine the witness to bring out any flaws in the said exhibits in order to P a g e 4 | 5 aid the court in determining or assessing the probative value of the said exhibits. Besides, it is worthy to note that the impugned Exhibit A has previously been tendered in evidence through PW2 by the former counsel of the accused person and same has been marked as Exhibit 4. Therefore, to object to Exhibit A, the same document that has been tendered into evidence by counsel for the accused through PW2 in my view amounts approbation and reprobation which cannot be allowed. From the foregoing therefore it is my view that the objection raised by counsel for the accused persons has no legal basis. The objection is thus overruled. H/H ADWOA AKYAAMAA OFOSU (MRS) CIRCUIT COURT JUDGE P a g e 5 | 5

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