

GHANA / JUDGMENT

REPUBLIC VRS KIFLE SEYOUM HAMPTON (D3/08/2022) [2023] GHACC 1050 (23 March 2023)

COURT
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23 March 2023

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IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON THURSDAY, 23rd DAY OF MARCH 2023
BEFORE HIS HONOUR KWABENA KODUA OBIRI- YEBOAH, CIRCUIT COURT JUDGE. D3/08/2022
THE REPUBLIC VRS KIFLE SEYOUM HAMPTON

RULING

The accused person was arraigned before this court on 2 counts of:

1. **FORCIBLE ENTRY: CONTRARY TO SECTION 202A (1) OF THE CRIMINAL AND OTHER OFFENCES ACT, 1960 (ACT 29).**
2. **CAUSING UNLAWFUL DAMAGE: CONTRARY TO SECTION 172 OF THE CRIMINAL AND OTHER OFFENCES ACT (ACT 29)** 1960 Article 19(2(c)) provides that: “A person charged with a criminal offence shall (c) be presumed innocent until he is proved or has pleaded guilty”. See GLIGAH & ATISO v THE REP [2010] SCGLR 870 The law provides for the submission of no case at the end of the case of the prosecution and as evoked by Counsel for accused under sections 173 of the Criminal and Other Offences Procedure Act, Act 30 provides as follows:
 173. Acquittal of accused when no case to answer 1 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 the accused to make a defence, the Court shall, as to that particular charge, acquit the accused. By this provision, the Accused Person at the close of the case for the prosecution, has invoked the provision supra, and in a written submission by Counsel, has submitted that, no case has been made against the accused person, sufficient, to justify the court to invite him to open his defence. Therefore, it is the responsibility of the court to make that determination as the provision has been invoked. The principle is that, at the close of the case of the prosecution, the Court must determine whether a prima facie case, has been made against the accused for the court to ask him to open his defence. And the court will have to acquit if the following happen, that is when:

- a. There had not been sufficient evidence to prove the essential element in a crime.
- b. The evidence adduced by the prosecution had been so discredited as a result of cross-examination that no reasonable tribunal could rely on the evidence.
- c. When the evidence was so unreliable that no reasonable tribunal could safely convict upon it.
- d. The evidence was evenly balanced, that is to say, that the evidence was susceptible to two likely explanations-one consistent with guilt, the other consistent with innocence. Where any of these exists, the court should acquit but where they are absent, then a prima facie case has been made. Therefore, at the close of the case for the prosecution, the evidence led, should be capable of displacing the presumption of innocence of the accused. It is only when this is done, that the court is justified to call on the accused to open his defence. The right of an accused to submit that there is no case for him/her to answer has been respected all these years and has become a time-honored practice in our Courts. See *Tsatsu Tsikata v The Republic* (2003-2005) 2 GLR 294, *Ali Kassena v The State* (1962) 1 GLR 144, *Moshie v The Republic* (1977) 1 GLR 258 and *Apaloo v The Republic* (1975) 1 GLR 156. See also *Dadie v The Republic* (2008) GMJ 167 CA; *The Republic v Gyamfi* (2007) 13 MLRG 192 CA. Per the facts of the prosecution attached to the charge sheet, Complainant Salim Jean Najim is the Managing Director of Najim Industries Limited at Osu. Accused Kifle Seyoum Hampton is an estates developer and lives at Spintex, Accra. In the year, 1978, through the Lands Commission, the complainant acquired 1.86 acres of land lying at Mantey Tsuru along the Tema Motor way area for industrial purpose for his company, Najim Industries Limited. The complainant has since remained on the land until 2018 when one Alhaji Abubakari instituted civil action Accra High Court against the complainant and Lands Commission claiming the land. In recent times, the accused started using land guards to harass the complainant on the land whenever he went to work. On 8/12/2021, as the complainant was on the land, the accused mobilized a group of young men and with a bulldozer entered the complainant's land to spread the trips of sand the complainant deposited on the land. The accused also used the bulldozer to cover the trenches the complainant dug for his work. On the same day, the complainant reported the case to the police and the accused was arrested. After investigation, the accused was charged and arraigned before the court. The accused person appearing before the court pleaded not guilty to all the charges and in such circumstance, the prosecution must prove the guilt of the accused as mandated by section 11 of the Evidence Act, 1975, NRCD 323 which states: "In a criminal action, the burden of producing evidence when it is on the prosecution as to a fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on the totality of the evidence a reasonable mind could find the existence of the fact beyond a 3 reasonable doubt". In the case of *Domena v Commissioner of Police* (1964) GLR 563 @ 568 it was put this way: "Our law is that by bringing a person before the court on a criminal charge, the prosecution takes upon themselves the onus of proving all the elements which constitute the offence to establish the guilt of the defendant beyond reasonable doubt, and that onus

never shifts. There is no onus upon an accused person, except in special cases where the statute creating the offence so provides; stealing is not covered by such a statute. (See; Woolmington v DPP (1935) AC 462; Bater v Bater (1951) All ER 458. See also Oteng v The State (1966) GLR 355 It is also trite law that in a criminal case, when an accused pleads not guilty to an offence, pursuant to S.11 (2) of the Evidence Act, 1975 (NRCD 323), the burden of proof is on the prosecution; and the standard of proof has to be beyond reasonable doubt as stated in Section 13(1) of the Evidence Act, 1975 (NRCD 323) and affirmed in the case DARKO v THE REPUBLIC [1968] GLR 203. There is no burden on the accused. See: COP v Isaac Antwi (1961) GLR 408 @ 412, Nkansah v The Republic (1980) GLR 184. The accused person is charged under Section 202A—Forcible Entry.

- (1) Whoever with violence makes an entry into any building or land, whether or not he is entitled to the possession thereof, shall be guilty of a misdemeanour, unless he does so in pursuance of a warrant or other lawful authority to use such violence. The ingredients of the offence, the prosecution is supposed to prove, the accused entering the land with violence or using threat of violence. The prosecution must prove that there has been an entry into a building or land and the entry must have been with violence. And to prove entry, it must be shown that irrespective of whether the accused had title to property or not, he did not have possession of it at the material time. If a complainant therefore complains that an accused has forcibly entered his land, that complainant must show to the satisfaction of the court that he, and not the accused, was in possession of the land at the time. See: Baddoo v The Republic (1968) GLR 1012-1015, Ekyinaba and Others v The Rep (1980) GLR 76-86. The other offence, count 2, was causing unlawful damage and the provision is under section 172 of the Act 29. There are several provisions under section 172. The prosecution was not specific but looking at the particulars of the offence which in part states, “...within the jurisdiction of this court did intentionally and unlawfully caused damage to building foundation, valued GHC 3,000.00, the property of Salim Jean Najim”, the court concludes that prosecution was looking at section 172 (1b). In the case of Homenya v The Republic (1992) 2 GLR 305-319, Acquah J as he then was held in holding 1. That “an accused could only be liable on a charge of unlawful damage to property under section 172(1) of the Criminal Code, 1960 (Act 29) where the prosecution was able to establish not only that the accused caused the damage intentionally but also that the damage was caused unlawfully. Again, his Lordship stated further, “The task of the court in a criminal trial under section 172(1) of Act 29 is not to embark upon the determination of the ownership of property as between the complainant and the accused . . . Thus, as soon as the prosecution realises from the investigation into the complaint that the trial is bound to be a camouflaged civil trial into the ownership of the property, they must decline prosecution since the accused’s claim to the ownership of the property is bound to negate the unlawfulness of his conduct”. The accused pleaded not guilty to these two offences before the court when the case was first called. Once the accused pleaded not guilty, the prosecution had the responsibility to prove their case against the accused. The prosecution in seeking to do that called three witnesses including PW1 Tismark Inja who testified that the 5 complainant is his friend who had 2.29 acres of land

which was leased to him by the government of Ghana and the complainant had a valid lease on the land as he secured a loan from the Amalgamated Bank Ltd and the complainant used the land to secure the loan and guaranteed with the land as collateral until the year 2010 and a discharge was issued. PW1 tendered exhibit G which was the Deed of Discharge dated 08/04/2010. PW2 was the complainant and he testified that he acquired 2.29 acres of land in 1979 and he has been on the land, and he has receipts covering the land and the necessary documents. He said on 14/10/21 he obtained a building permit to start work on the land and the accused placed a container at the entrance of the land to prevent them from working. PW2 went further to say that on 08/12/21 he was on the land with workers, accused brought a group of land guards together with a bulldozer to indiscriminately spread trips of sand he deposited on the land and further covered trenches dug for the work and he reported the case to the CID. PW2 tendered exhibits A – F which were various exhibits including indenture, judgment, search document among others. The Investigator PW3 testified that the complainant reported to the CID that he was with his workers on his land at the Spintex road when the accused mobilised a group of young men with a bulldozer to enter the land to spread the trips of sand he has deposited on the land and further used the bulldozer to cover the trenches dug for his project. PW3 said the accused was arrested and investigation caution statement was obtained from him. PW3 referred to investigation which was to do with the land ownership which showed that the complainant acquired the land, and the accused could not produce his grantor. PW3 concluded by saying he paraded the accused person before the regional crime officer who instructed him to charge the accused person and produced him before the court. After the testimony of the Investigator, PW3, prosecution announced the end of the case of the prosecution. 6 From the evidence before the court, the witness called by the prosecution were PW1, PW2 and PW3. The evidence of PW1 was not useful as his evidence has nothing to do with the charges brought against the accused person. PW2 the complainant gave evidence that he was on the land with his workers when accused brought a group of land guards together with a bulldozer to indiscriminately spread trips of sand he deposited on the land and further covered trenches dug for the work and he reported the case to the CID. From the whole prosecution case this was their evidence provided by the complainant PW2. And from his evidence it was after this happened that he went to report the matter to the Regional CID Interestingly during cross examination, the complainant PW2, Salim Jean Najim was asked the question. Q1. You said you know the accused. A. I met him at the regional police station when he was arrested and brought to the police. From his evidence, it means he did not even know the accused and hence what he said in his witness statement in paragraph 9 is not the case and such a thing which form the basis of the charges brought against the accused person did not happen and a contradiction of the case of the prosecution. And no wonder the investigator (PW3) did not investigate the charges brought against the accused. And from the evidence that is why the evidence of PW2 is not corroborated by the witnesses called and the said workers PW2 claim he was working with at the time the accused entered with the bulldozer were not called and there was also no evidence of same. It is therefore not surprising that the investigation caution PW3 tendered which was offered by the accused exhibit H says

nothing incriminating against the accused with respect to the charges brought against the accused but rather accused statement in fact 7 was claiming ownership of the land as he said he has been on the land since 2018. Again see: *Homenya v The Republic* (1992) 2 GLR 305-319 It is trite law that the onus of proof which is always on prosecution if that onus is not successfully discharged a submission of no case should be upheld. See *Donkor vrs The State* (1964) GLR 598 SC and *Nyarko vrs The State* (1963) 2GLR 59 SC. Therefore, submission of no case by Counsel on behalf of the accused will be upheld, and the accused person will be accordingly acquitted and discharged on the two charges brought against him. HIS HONOUR KWABENA KODUA OBIRI-YEBOAH, CIRCUIT COURT JUDGE. 8

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