

GHANA / JUDGMENT

REPUBLIC VRS ELVIS TAKYI APPIAH (D6/387/17) [2023] GHACC 1070 (23 February 2023)

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IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON THURSDAY, 23rd DAY OF FEBRUARY 2023 BEFORE HIS HONOUR KWABENA KODUA OBIRI- YEBOAH, CIRCUIT COURT JUDGE.
D6/387/17 THE REPUBLIC VRS ELVIS TAKYI APPIAH

JUDGMENT

===== The
accused was arraigned before this court on two counts of Issue of False Cheque: Contrary to section 313A (1) (a) of the Criminal Offences Act 1960 (ACT 29). The accused was also charged with the offence of causing unlawful damage contrary to the Criminal Offences Act 1960 (ACT 29). The law provides under sections 173 and 174 of the Criminal and Other Offences Procedure Act, Act 30 as follows:

173. Acquittal of accused when no case to answer 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 the accused to make a defence, the Court shall, as to that particular charge, acquit the accused. 1
174. The defence
- (1) At the close of the evidence in support of the charge, if it appears to the Court that a case is made out against the accused sufficiently to require the accused to make a defence, the Court shall call on the accused to make the defence and shall remind the accused of the charge and inform the accused of the right of the accused to give evidence personally on oath or to make a statement.
- (2) The Court shall then hear the accused if the accused desires to be heard and the evidence the accused may adduce in defence. By this provision, the Accused at the close of the case for the prosecution, evoked the provision, however the court came to the conclusion that a case has been made against the accused and the accused was called upon to answer. The

accused then opted to give evidence personally on oath and also call witnesses. The facts of the case of the prosecution as attached to the charge sheet is that the Complainant Philip Korletey is the Managing Director of Mobile Max Limited in Accra. Accused Elvis Takyi Appiah is the Director of Magnate Limited in Accra. Somewhere in February 2015, accused rented two storerooms on the 1st floor of the complainant property at Spintex Community 18 junction to use as offices for his company. Upon agreeing on the rent amount, the accused issued the complainant with two postdated cheques of Union Savings and Loans, Anloga branch No. 000100 and Standard Chartered Bank, Kumasi Harper road No. 275295 with face values of GHC 24,000.00 and GHC 12,000 respectively to be drawn by the complainant on the maturity dates stated in the charge sheet to cover the rent. On maturity dates when the complainant presented the cheques, they were dishonoured and returned to drawer indicating that there were no funds in the accused accounts to honour the cheques. The complainant made several attempts to get the accused to find 2 solution to the problem but to no avail. On 4/2/2017, the complainant visited the store rooms and found that the accused had damaged the burglar proof door locks valued GHC 800, main glass door valued GHC 9000, T & J ceiling valued GHC 5000, wall painting valued GHC 2000, wall valued GHC 680. And electrical wiring valued GHC 2,200 and had vacated the place. The complainant reported the case to the police but accused failed to honour police investigation. Based on this, accused was served with criminal summons to appear before the court. This case was first brought to the court on 22/03/2017 and on that day the plea of the accused was taken before the court differently constituted. The accused pleaded not guilty to all the three charges brought against him before the court differently constituted and before this court. As the accused pleaded not guilty, it is the duty of the prosecution to 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 reasonable doubt". See *Oteng v The State*

(1966) GLR 355, *COP v Isaac Antwi* (1961) GLR 408-412, *Ali Yusif Issa (No. 2) v The Republic* (2003-2004) SCGLR 174. It is stated under Section 313A of the Criminal Offences Act, 1960, Act 29 as follows: 313A. Issue of false cheque

- (1) A person who
 - (a) without reasonable excuse, the proof of which lies on that person, issues a cheque drawn on a bank with which that person does not have an account, or
 - (b) issues a cheque in respect of an account with a bank when that person does not have a reasonable ground, the proof of which lies on that person, to believe that there are funds or adequate funds in the account to pay the amount specified on the cheque within the normal course of banking business, or

- (c) with intent to defraud stops or countermands a cheque previously issued by that person, commits a criminal offence and is liable to a fine not exceeding two hundred and fifty penalty units or to a term of imprisonment: not exceeding twelve months or to both the fine and the imprisonment, and in the case of a subsequent criminal offence to a fine not exceeding one thousand penalty units or to a term of imprisonment not exceeding five years.
- (2) A person shall not be convicted of a criminal offence by virtue of subsection (1) (b) in respect of a cheque which is presented for payment later than three months after the date specified on the cheque for payment.
- (3) Where a person is convicted of a criminal offence by virtue of subsection (1) (c), the Court may, if satisfied that there are adequate funds in the account of that person in respect of which the cheque in question was issued to meet the amount specified on the cheque, order the bank in question to honour the cheque, and a bank complying with the order is not liable to a claim in respect of that act. Prosecution has to prove that at the time of signing the cheque the accused had insufficient funds in his account to satisfy the value of the cheque. During the trial of the case before the Court, the Prosecution in proving their case called 3 witnesses PW1 – Philip Korletey, PW2 – David Konney Annan, and PW3 - the Investigator, D/C/Insp. Seth Agyapong. Prosecution tendered Exhibits A – Photograph of Union Savings and Loan Cheque leaflet, B – Standard Chartered Bank Cheque Leaflet, C – Photograph of Damage T & G ceiling, D – Photograph of damaged wall painting, E – 4 Photograph of broken front door, F – Photograph of damaged block wall of shop, G – Investigation Caution Statement and H – Charged Statement of Accused. After the case of the prosecution, the court came to the conclusion that a case has been made against the accused and he was called upon to open his defence. The accused opened his defence before the court and tendered various exhibits. Exhibit 1 – Bank Statement of Standard Chartered Bank belonging to Magnate Unit Ltd. Exhibit 2 -Statement of Account from Union Savings and Loans belonging to Magnate Co Ltd. Exhibit 3 – Proforma Invoice generated by Magnate Company Ltd in 2015 for the complainant. Exhibit 4 Proforma invoice dated 24/05/2015. Exhibit 5 Proforma invoice dated 26/05/2015. Exhibit 6 – Letter dated 10/09/2015 with the heading “Request for tenancy Agreement”. Exhibit 7 series were photographs, with 7 A being photograph of the premises rented by the Accused prior to his occupancy. 7B Photograph of the accused workers (painters) working in the premises in question. Exhibit 8 - Statement of Account belonging to Magnate Unit Ltd for Omni BSIC Bank and Exhibit 9 – Photograph of the rear end of Complainant building. The accused also called two witnesses, one Eric Frimpong Owusu who testified that he worked in the company of the accused from the year 2014-2017 as a Chief Technician. The other witness for the defence is one Yahaya Safiano John who also testified before the court, that he worked as a night Security Officer and observe various incidents at the premises of the complainant. The accused person was charged with three offences, two offences of issue of false cheques and one offence of causing unlawful damage. For the two offences of issue of false cheque, the accused was charged under section 313 (A) (1) (a) of Act 29/60. 5 That section provides, (a) “without

reasonable excuse, the proof of which lies on that person, issues a cheque drawn on a bank with which that person does not have an account". The particulars of the two offences the accused was charged were: Count 1: Elvis Takyi Appiah; Businessman: - During the month of February 2015, at Spintex, in the Greater Accra Region and within the jurisdiction of this court, you did issue Union Savings and Loans Anloga Branch postdated cheque No. 000100 for an amount of GHC 24,000 to be drawn by one Philip Korletey at the said Union Savings and Loans on 11/03/15. When you had no grounds to believe that you had adequate funds in your account to pay the amount specified in the cheque within normal course of banking business". The Count two was another charge with respect to another cheque and had very similar particulars. From the particulars it means the accused was wrongly charged under section 313A (1) (a) with respect to the two counts. From the particulars of the offence the accused should have been charged under section 313 A (1) (b) which provides:

- (b) issues a cheque in respect of an account with a bank when that person does not have a reasonable ground, the proof of which lies on that person, to believe that there are funds or adequate funds in the account to pay the amount specified on the cheque within the normal course of banking business In the case of *The Republic v Ernest Thompson & 4 ORS* (2021) JELR 107960 SC, J3/05/2020 which was delivered on March 17, 2021. Justice Amadu Tanko dealt with the issues of particulars of a charge and in paragraph 42 stated in the last sentence of the paragraph "I hold the view that the proper formulation of criminal charges requires the prosecution to sufficiently indicate to the accused person the nature of the acts the commission or omission of which has led to the event which the law has prohibited with penal consequences for its violation". See also *Dakurugu v The Republic* (1989-90) 1 6 GLR 308, *Dochie v The State* (1965) GLR 208, *Bulley - Neequaye v The State* (1965) GLR 424. From the particulars of the offence the accused can be properly charged under section (b) as demonstrated and hence that is how it will be considered by the court. However, it must be put on record that the court has applied its mind to the principle of law that; "The traditional rule in criminal justice as I know it is that, even where there is an error in the proceeding, the courts do not quarrel if the error inures to the benefit of a person accused of a criminal offence. Trouble arises only when the error or irregularity inures to deprive the accused of his constitutional rights". *Marfo v The Republic* (1981) GLR 722. From those two charges the accused was charged, the evidence before the court per the prosecution was provided by PW1 who testified at paragraph 3, 4 and 5 of his witness statement.
- 3. The Union Savings and Loans cheque number 000100 was presented at the bank for payment, but it was dishonoured for lack of funds. Attached is a copy and is to be tendered as Exhibit A.
- 4. The accused person was informed of the dishonoured cheque, and he pleaded that he would later cash it and pays me directly, but he failed.

5. The Standard Chartered Bank cheque number 275295 was also presented to the bank, but it was dishonoured for lack of funds. I informed the accused person of the dishonoured cheque and asked him to yield possession of the property and pay for the months that he has been in possession of the property. Attached is a copy of the cheque and same is to be tendered as exhibit B. The accused in his defence stated in paragraph 16 of his witness statement: 7
16. On the 3rd July 2015 (i.e., Three good months after the maturity dates on the cheques) I realized that the complainant had presented the two (2) cheques for clearing when indeed and in fact he was not entitled to the sum of the 2 cheques. Details of these facts are contained in Exhibit 1 and 2. That was the defence of the accused and the said defence was confirmed by the complainant PW1 in his cross examination by counsel for the Accused. PW1 during the cross examination was asked about the timelines as to when the cheques were presented, and these were his responses: Q4. From the maturity date indicated on exhibit A to the time that you presented exhibit A for clearing you will agree with me that the time difference is over 3 months, is that not correct. A. Yes Q7. You will agree with me that you waited for over 3 months before exhibit B was presented for clearance. A. Yes The exhibits A and B were the cheques which per the prosecution were issued by the accused and that is what formed the basis of the first two charges that were brought against the accused person. And from the evidence and the records before the court they were presented after 3 months as was admitted by PW1 the complainant. In that sense it means the law is on the side of the accused as the law states at section 313A 2 of Act 29/60 which states: A person shall not be convicted of a criminal offence by virtue of subsection (1) (b) in respect of a cheque which is presented for payment later than three months after the date specified on the cheque for payment. 8 The accused will therefore be made to take advantage of the provision of the law as provided and hence as the law states he cannot be convicted with respect to those two offences under count 1 and 2. The accused was charged with count 3 which was causing unlawful damage contrary to section 172 (1) (B) of Act 29/60 which indicates a charge of second-degree felony. Accused was charged with causing damage to door glasses valued at GHC 9000, T & G ceiling valued at GHC 5000, burglar proof locks valued at GHC 800, wall painting valued at GHC 2000, valued GHC 680 and electrical wiring valued at GHC 2,200 all totaling GHC 19680 property of the complainant. From the evidence before the court, the relationship between the accused and the complainant is a landlord tenancy relationship. This relationship became complicated and challenged as they were having commercial landlord and tenant relationship and the complainant who is the landlord later became a customer of the accused. The accused who was using the premises of the complainant for business, provided various CCTV installation services for the complainant. From the evidence the parties could not severed their relationship appropriately leading to various infractions afterwards. This is how the complainant, PW1, put it in his witness statement.

8. After several months I asked the accused person to vacate the property and hand over the keys to me, but he rather became aggressive and said he would not vacate the premises.
9. On 4/2/17, I visited the property and found out that the accused person had vacated the property but damaged the glasses, T & G ceilings buttons, electronic wirings in the shop and cement block wall of the property. The accused person further cut holes in the rest of the ceilings. 9 The prosecution tendered pictures of exhibit C which shows hanging wires from the ceiling and some T & G in the roof removed and one buckled out. Exhibit D also shows wall with marks and hanging wires from holes in the T & G ceilings which looks like hole of lighting socket which has been removed or not fixed. Exhibit F also shows painted wall with some holes and marks which looks more like cable trunking marks on the wall, terminating at a square socket holder. Generally, exhibit F demonstrates marks and holes left behind as a result of fixtures which have been removed from a wall which has been painted when the fixtures were in place. Exhibit E is a photograph of a door probably a glass door with collapsible burglar proof and from the picture whether the glass is in place or not is not clear however from the evidence of both the prosecution and the defence, the glass was there and same was broken. The accused in his defence relied on his witness statement, specifically paragraphs 23, 24 25, 26, 27, 29, 31 to defend himself and his exhibits. In all these the accused said he painted the premises before moving in, said a small hole was created for the drainage of condensation from the indoor unit and tendered an exhibit to show how various tenants of the complainant air conditioners have been installed at the back of the complainant building. The accused also testified that he had information that the complainant PW1 broke into his premises with the help of a group of young men. This was also corroborated by the two witnesses of the accused, which he reported to the police. The accused testified specifically in paragraph 29 of his witness statement and stated: "I also realized that the complainant had forcibly pulled out the solar cables which had been routed through the ceiling for connection to my inverter system in the premises. This illegal act of the complainant caused 3 pieces of the T & G buttons to fall out of the ceiling as captured in exhibit C which is already in evidence". 10 The accused testified further that the round holes in the T & J ceiling measuring about 3 inches radius (as captured in exhibit D) were created by the complainant's electrician to enable him install LED panel lights which I had provided with my own resources and none of the round hole in the T & J ceiling were created to damage the ceiling. Accused further stated that the wires hanging out of the round holes in the ceiling exhibit D were the very wires laid by the complainant electrician to be connected to light. Accused stated further that the agreement with the complainant was to remove and take away his electrical fittings at the end of the tenancy and that is exactly what he did prior to vacating the place. The accused concluded that there was a big storm on the 31st of January 2017 which caused damage to several portions of the complainant building including the glass door at the entrance of the premises and this evidence was corroborated by the two witnesses the accused called. I have taking time to go through all these evidence of the accused in this judgment to demonstrate how the accused made the effort to respond to the various accusation to demonstrate that he does not have a guilty mind as per his

statement to the police (exhibit G), where the accused stated in his penultimate paragraph, “For his claims of causing damage to any of his property is a complete false statements against me which I’m ready to defend myself in court with enough evidence to prove that he only delights in troubling me and distracting me from my business”. Goddard CJ captured this position of the law aptly in *Brend V Wood* (1946) TLR 462 as follows: “It is of the utmost importance for the protection of the liberty of the subject that a Court should always bear in mind that unless a statute, either clearly or by necessary implication, rules out mens rea a constituent part of crime, the Court should not find a man guilty of an offence against a criminal law unless his mind is guilty”. I considered the responses of the complainant PW1 from the records and this is what PW1 said during cross examination on his part about the damages caused by the accused: 11 Q75. The tiny little hole in the wall which you have described as one which was deliberately created by the accused person is the very hole that you in your capacity as landlord provided for the connection of the accused person’s air-conditioner. A. That is not true. Because we realized that the accused intentionally vandalized the shop and created holes and damaged the Trasaco floor which created a lot of cracks in the building. Q76. In your complaint together with your statement to the police as well as your witness statement in this court you only made mention of a hole and not several cracks. A. I never mention of only one hole. Q77. In your exhibit C you exhibited the photograph of the hole in question and no cracks. A. there is holes and cracks but because of the picture I can’t see it clearly. Q78. The accused did not intentional and deliberately damage your wall by creating a hole in it. A. That is not true. The accused intentionally damaged the walls. Apart from that he went to my shop and damage the glass over there. Q82. Were you physically present when the alleged damage was taken place. A. I wasn’t there but the caretaker confirmed it. The accused himself threatened that he will vandalize the shop before he leaves. Q83. Was your caretaker physically present when the alleged damaged took place. 12 A. He was present. Q84. Can you give your caretaker’s name to the court. A. We were calling him Kwame PW1 reference this caretaker who was present and saw the accused causing damage to his property, whom he knew his name only as Kwame was not called by the prosecution to testify. PW1 called another witness, but this important witness who witnessed these damages caused by the accused was not called by the prosecution and no reasons were given for which the said witness was not called. See: *Frimpong @ Iboman v The Republic* (2012) 1 SCGLR 297, *Gligah v The Republic* (2010) SCGLR 870. I have looked at all the exhibit tendered by the prosecution, and I am of the opinion that the evidence on record does not represent any intentional damage even if there are damages at all. The accused’s story needs only be reasonably probable. See: *Amartey v The State* (1964) GLR 256. The defence of the Accused is therefore reasonable and hence creates doubt, which will benefit the accused before the court. According to Justice A.N.E. AMISSAH, in his book ‘Criminal Procedure in Ghana’, 1982, p. 95, the existence of the reasonable doubt will obviously mean that the prosecution has failed to prove its case ‘beyond reasonable doubt’. It is trite learning that the law does not require much from the accused, but the accused is only to raise reasonable doubt as to his guilt. See the Judgement of Korsah CJ in the case of *COP v Antwi* (1961) GLR 408, See also *Osafo v The Rep.* (1993-94) 2

GLR 402. 13 The accused will therefore benefit from the doubt created by his defence and will be found not guilty on all the three counts. The accused will therefore be acquitted on the three charges brought against him and accordingly discharged. HIS HONOUR KWABENA KODUA OBIRI-YEBOAH, CIRCUIT COURT JUDGE. 14

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