

GHANA / JUDGMENT

REPUBLIC VRS DELA (AR/KD/DC/154/2023) [2023] GHADC 810 (2 October 2023) [2023] GHADC 810

COURT

District Court

CASE / FILE NUMBER

AR/KD/DC/154/2023

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CORAM: IN THE DISTRICT COURT HELD AT KODIE IN THE ASHANTI REGION ON MONDAY, THE 2ND DAY OF OCTOBER, 2023 BEFORE HER WORSHIP MRS CHRISTIANA ODARKOR BRUCE-ASHIRIFIE (ESQ.), THE DISTRICT MAGISTRATE. SUIT NO. AR/KD/DC/154/2023 THE REPUBLIC VRS BLESS DELA

JUDGMENT

The accused person herein has been charged with the offence of Public Nuisance by operating a public toilet under insanitary conditions contrary to Section 56(a) and (b) of the Public Health Act, Act 851 of 2012. The accused person pleaded not guilty when the charge was read and explained to him and so the case was set down for trial. SUMMARY OF THE PROSECUTION'S CASE The case of the Prosecution is that the accused person is an operator of a public latrine behind the Kodie Methodist church which is within the jurisdiction of this court. According to prosecution on the 20th of December, 2022, the District Environmental health officer was on his rounds to monitor the operation of public latrines in the District. Prosecution stated that after inspecting the facility of the accused person it was found out that there was growth of weeds behind the toilet 1 | P a g e facility which is likely to attract snakes and rodents which are injurious to the health of the accused person himself and to people that patronize the facility. It is the case of prosecution that the nuisance was brought to the attention of the accused person and an abatement notice was subsequently issued to him. According to prosecution on the 11th of January, 2023, the District Environmental Health Officers visited the facility for re-inspection of the fore-mentioned nuisance but to their dismay the accused refused to abate the nuisance and as if that was not serious enough had opened one of the inspection chambers which had attracted flies to be hovering around the place which is likely to cause communicable diseases in the community. Prosecution averred that again on 13th of January, 2023 two of the officers of the Environmental Health Office of the Assembly went to the premises to lock it up until the accused person herein has abated the nuisance. It is the case of the prosecution that the accused person herein broke the padlock to the door and started operating the facility and due to that he was

arraigned before this court charged with the above offence. Prosecution called PW 1 one Simon Nayoh Kwame who per his witness statement filed on the 27th of February, 2023 testified that he was one of the Environmental Health Officers who visited the premises of the Accused person and he was issued with an abatement form. She tendered a copy of the abatement form into evidence as Exhibit "A". PW 1 further stated that after they had been at the toilet facility of the accused for the 3rd time and found that he had not abated the nuisance they locked the premises to prevent the accused person from operating it until he had adhered to 2 | Page their warning to abate the nuisance. He tendered into evidence Exhibit "B" which is a picture of the premises under lock. He added that later the accused person herein forcefully broke the padlock and started operating the toilet. Prosecution thereafter closed its case and the Accused Person was invited to open his defence. EVIDENCE OF THE ACCUSED PERSON According to the Accused person herein on the 20th of December, 2022, he was operating his public toilet when the Environmental Officers from the District Assembly visited his toilet facility. Per his witness statement filed on the 24th of July, 2023 he stated that the officers were four (4) in number and they served him with an abatement notice which indicated the offence as Growth of weeds. He tendered a copy of the notice into evidence as Exhibit "1". It is the case of the accused person that the officers gave him time to clear the weeds and he did clear the weeds before their subsequent visit. He tendered into evidence Exhibit "2" which is a video of people weeding of which the accused claimed the weeding was done on the 05/01/2023. The accused person further tendered into evidence Exhibit "3" and "4" claiming that he was charged with a different offence to the one that he had the abatement notice for. ISSUE At the end of the trial, the issue to be determined by the court was whether or not the Prosecution had adduced sufficient evidence to warrant this Court to convict the Accused person under to Section 56(a) and (b) of the Public Health Act, Act 851 of 2012. 3 | Page THE APPLICABLE LAW It is a general principle of law that in every criminal trial, the burden of proof lies on the Prosecution. This principle finds expression in Section 11(2) of the Evidence Act, 1975 (NRCD 323) which provides as follows: "In a criminal action the burden of producing evidence, when it is on the prosecution as to any fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of the fact beyond a reasonable doubt.". The standard of proof required of the Prosecution by law is to prove the guilt of an Accused person beyond reasonable doubt. This standard of proof is provided under section 13(1) of the Evidence Act, 1975 (NRCD 323) which states as follows: "(1) In any civil or criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond reasonable doubt" This principle is reiterated in the case of *Asare v the Republic* [1978] GLR 193 by Anin J. A. where he stated that: "there was no burden on the Accused person to establish his innocence, rather it was the prosecution that was required to prove the guilt of the Accused beyond reasonable doubt" The Accused person herein has been charged with the offence of Public Nuisance by operating a public toilet under insanitary conditions contrary to Section 56(a) and

(b) of the Public Health Act, Act 851 of 2012, defined as follows:- "A person who 4 | Page

- a. Within the area of authority of a District Assembly or any other public place or space causes or permits to be placed a carrion, filth, dirt, refuse, or rubbish, or any other offensive or otherwise unwholesome matter, on a street, yard, an enclosure, or open space except at the places set apart by the local authority of the environmental health officer for that purpose, or
- b. Causes or contributes to the creation of a nuisance in a public place which is part of or which adjoins a dwelling-house” Commits an offence and is liable on summary conviction to a fine of not more than two hundred and fifty penalty units, or to a term of imprisonment of not more than three years or to both. It follows, from the above provision that, to establish the offence of Public Nuisance as the accused person has been charged, Prosecution has to prove that the accused person herein caused or permitted someone else to place a carrion, filth, dirt, refuse, or rubbish, or any other offensive or otherwise unwholesome matter, on a street, yard, an enclosure, or open space except at the places designated by the local authority for that purpose. According to the Prosecution witness he was one of the Environmental Health Officers who visited the premises of the accused person on the 20th of December, 2022 and issued him with an abatement notice to weed around his toilet facility. PW 1 further stated that after they had been at the toilet facility of the accused for the 3rd time and found that he had not abated the nuisance they locked the premises to prevent the accused person from operating same until he had carried out their warning. He tendered into evidence Exhibit “B” which is a picture of the premises under lock. He added that later the accused person herein forcefully broke the padlock and started operating the toilet. 5 | P a g e The accused person however denied PW 1’s assertion and claimed that he carried out the instruction of the Environmental health officers by getting people to weed around the premises and this was carried out on the 5th of January, 2023. He tendered into evidence Exhibit “2” which is a video of people weeding. Even though, the video did not capture the toilet facility and only showed people weeding and clearing a heap of rubbish or refuse, it nevertheless, goes to show that the place was indeed very filthy to be operated as a toilet facility. Furthermore, even though the accused person claimed that he cleared the facility before the subsequent visit by the environmental officers his answers under cross examination suggested otherwise. This is what transpired under cross examination of the accused person Q: At paragraph 3 of your witness statement you said that you were served with an abatement notice is that so? A: Yes Q: How many days were you given to clear the weeds A: One week Q: But you just told the court that you keep the place tidy. A: Yes Q: So why were you served with an abatement notice A: The 1st day that they came they told me to tidy up the place Q: Can you tell the court the number of times the officers came to your premises A: Three (3) times 6 | P a g e Per the above and by the accused person’s own showing, the Environmental Officers were at his facility on three occasion to get him to clear the nuisance at the premises. Therefore, his assertion that he immediately complied with the abatement notice therefore cannot be true. Again, the accused person claimed in paragraph 7 of his witness statement that the padlock the complainant alleged that he caused damage to is not the one tendered into evidence by PW 1 as Exhibit “B”. Under cross

examination, however, he admitted that he indeed broke the padlock the Environmental Officers used to lock up the premises. This is what he said under cross examination. Q: I am putting it to you that on the 3rd visit, you had not done the work and that was why the officers locked up the toilet. A: I did it. Q: And immediately they left you broke the padlock. A: Not immediately, I went to see the manager at the office that I had done the work but he asked me to wait for 2 hours but since there were people waiting to use the facility, I could not take the pressure and broke the padlock. Continuing with the cross examination Q: I put it to you that you broke the padlock out of disrespect to the officers who came to the premises to warn you to abate the nuisance. A: It was not out of disrespect but I was trying to save the community Clearly from the foregoing the accused person did not abate the nuisance when issued with the abatement notice and so the facility was locked up which he per 7 | P a g e the above broke the padlock. His assertion that he was trying to save the community is untenable. The people in the community would be better off with a clean and a tidied public place of convenience to prevent the spread of communicable diseases. Per the evidence before this court prosecution has adduce sufficient evidence to warrant the conviction of the accused person herein under Section 56(a) and (b) of the Public Health Act, Act 851 of 2012. I therefore find the accused person to be guilty of Public Nuisance i.e operating public toilet under insanitary conditions contrary to Section 56(a) and (b) of the Public Health Act, Act 851 and I hereby convict him of same. SENTENCING The court has taken into consideration the circumstances of the accused person before passing this sentence. The accused is hereby sentenced to pay a fine of One Hundred and Fifty (150) Penalty Units or in default two (2) weeks imprisonment with hard labour. CHRISTIANA BRUCE-ASHIRIFIE, ESQ., (DISTRICT MAGISTRATE). ACCUSED PERSON : PRESENT PROSECUTION 8 | P a g e : JOSEPH BAWA MAHAMA, ENVIRONMENTAL ANALYST OF THE AFIGYA KWABRE SOUTH DISTRICT ASSEMBLY 9 | P a g e

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