

IN THE CIRCUIT COURT '10 OF GHANA, ACCRA, HELD THIS
WEDNESDAY THE 14TH DAY OF DECEMBER, 2022 BEFORE HER HONOUR
EVELYN E. ASAMOAH (MRS)

CASE NO.

D21/334/2022

THE REPUBLIC

V.

MENTOR SEY

CHIEF INSPR. BENSON BENNEH FOR THE REPUBLIC

MR. EMMANUEL OPOKU SOMUAH FOR THE ACCUSED

===== *JUDGM*
ENT

- The accused persons were charged with the offence of Unlawful possession or control of narcotic plants drugs contrary to section 41 of the Narcotic Control Commission Act 2020 (Act 1019). All the accused persons pleaded not guilty to the charge.
- The facts, presented by the prosecution, are as follows: On 30th March 2022 at about 12:00, the Teshie District Police Command had a tip-off from the management of San Hotel off the Teshie Bush road that some group of Nigerians had come to lodge in their facility. That they move out very late in the night and come back at midnight coupled with smoking of Indian hemp in their room where they were lodging. According to the management, their actions in the hotel put fear in other guests lodging there. On the same day, the police personnel from the Teshie District Command proceeded to the said hotel where the accused, all music artists, were arrested in room 138 of the hotel. A search conducted in their room disclosed particles of dried leaves, a piece of wrapped

used burnt dried leave suspected to be Indian hemp, and burnt aluminum foils suspected to have been used in consuming narcotic drugs. After investigations, the accused persons were charged with the offences.

- The complainant in this case in his testimony contended: That the accused, for the month they lodged at the hotel, always left the hotel at midnight and also came along with some raster-haired men, numbering about 10. That the taxi driver who picked them up from the hotel and brings them back all the time whispered to him that the accused were into drug peddling. He took notice of their movement, suspected them, and informed the police. He later led the police to the hotel where all the accused were arrested. A search conducted in their rooms disclosed particles of dried leaves suspected to be Indian hemp and sharpened cutlass.

- According to the investigator, the dried leaves found in the accused persons' room were parceled, sealed, and labeled in the presence of the accused persons and sent to the Police Forensic laboratory for examination.

Section 41 of the **Narcotics Control Commission Act, 2020 (Act 1019)** states:

“Unlawful possession or control of narcotic plants (1) A person who without lawful authority, proof of which lies on that person, has possession or control of a narcotic plant for use or for trafficking commits an offence. (2) A person who commits an offence of unlawful possession or control of a narcotic plant — (a) for use is liable on summary conviction to a fine imposed in accordance with the penalty specified in the Second Schedule or a term of imprisonment specified in the Schedule if the fine is not paid; or (b) for trafficking is liable on summary conviction to the fine and imprisonment specified in the Second Schedule and an additional term of imprisonment specified in that Schedule if the fine is not paid”

- In the case of **Ellis Tamakloe V. The Republic Criminal Appeal J3/2/2009 17th February 2010** – Justice Ansah JSC Stated:

“The ingredients of the offence of possessing narcotic drugs as can be gleaned from the offence created by section 2 of the Narcotic Drugs Control, Enforcement and Sanctions Law, 1990 PNDCL 236 which provided that: “(2) Any person who without lawful authority, proof of which shall be on him, has in his possession or under his control any narcotic drug commits an offence.”

To secure a conviction of a person charged with the offence of possessing a narcotic drug under PNDCL 236, the prosecution must prove beyond reasonable doubts that

i. “the appellant had custody or control of the drugs;

ii. he knew of the presence of the drugs; and he knew of the nature of the drugs possessed”

Justice S.A Brobbey in his book Practice and procedures in the trial court and Tribunals of Ghana (2nd Edition) at page 66 stated: “... if he does not plead guilty, but the charge sheet gives him reasonable information of the nature of the charge he faces, conviction will be based on the evidence led more than the charge sheet itself or the particulars.”

- It is the case of the prosecution that the accused persons had in their control or possession narcotic drugs which they used/ smoked. As indicated above they were charged under section 41 of the Narcotic Control Commission Act 2020 (Act 1019)- Unlawful possession or control of narcotic plants drugs. The key question is: whether the accused were in possession of the said drugs. According to the investigator, particles of dried leaves suspected to be Indian hemp and burnt foils suspected to have been used to consume the drugs were found in the accused person’s room. The forensic report indicates that the exhibit tested

positive for delta9- tetrahydrocannabinol, cannabiniol, and cannabidiol, all active ingredients in cannabis.

In the case of **Mohammed Ibrahim Kamil V. The Republic** Criminal Appeal Number. J3/3/2009 8th December 2010 Justice Ansah JSC stated:

“This being a criminal trial, the prosecution bore the onus of proof that the appellant possessed the narcotic drug as charged against him, which they must discharge on proof beyond reasonable doubts. To secure the conviction of an accused person on such a charge, Atuguba JSC after considering the authorities in an exhaustive manner, stated the ingredients of the offence in Bonsu alias Benjillo v The Republic [2000] SCGLR 112 at 138 to be as follows:

“I hold that on a charge of possessing a narcotic drug under PNDCL 236 the prosecution must prove: (i) custody or control of the drug by the accused; (ii) knowledge of the presence of the drug: see Warner v Metropolitan Commissioner [1969] AC 256 HL; R v Boyeson [1982] 2 All ER 161 and Akosah v The Republic [1979] GLR 250; and (iii) knowledge of the nature of the drug possessed.” ...It is equally well settled that physical possession alone would not be sufficient to prove a case of possessing narcotic drugs against the appellant. The issue was, was there evidence establishing that the appellant had the requisite mens rea or guilty knowledge, or evidence from which it was reasonable to presume the appellant proved to be in possession well knew, or ought to have known that the article he possessed was prohibited drugs, in this case, cocaine?”

- In this case, A1, A2, and A3 contended that the police found dried leaves in their hotel room. The test report shows that the dried leaves tested positive for cannabis.

A1- In his witness statement, averred that: He is a musician who came to Ghana to perform at some shows. He was introduced to the fourth accused person's father who promised to sponsor his music career. He booked a room for him, A2

and A3 at the Sun Hotel. They occupied room 140 whereas A4 and his father and father's girlfriend occupied room 138. A2 later brought his wife and a month-old baby to join them in the room. During their stay, they left the room to perform at shows and return to the hotel thereafter. On 30th March 2022, they were in their room when a team of police officers in the company of the general manager came to the room. According to him, the police officers searched their room but nothing was found. They then proceeded to search room 138. The other accused persons had similar facts in their witness statements.

Contrary to this evidence, A1 in his caution statement indicated that the police searched the room and found some dried leave.

A1 in his caution statement that: "*... About 2 months ago a friend of mine introduced me to Thomas Oseme.... He took me along and got me a hotel room to lodge with his two sons... yesterday 30/3/22 at about 1:00 am, we were at the hotel when some policemen came and effected our arrest. A search conducted in our room disclosed some dried leaves. I know nothing about these particles of leaves found in our room...*"

- A2 also in his caution statement admitted that particles of dried leaves were found in their hotel room. He stated: "Those particles of dried leaves found in our hotel room were under the bed before we checked into the hotel..." A3 in his caution statement pointed out that: "... Yesterday 30/3/31 at about 12:30 noon we were at the hotel when some group of policemen came in. They ransacked our room but found only some particles of dried leaves and a laptop..."

The facts reveal that the accused persons before their arrest had occupied the room for about 2 months. There is no doubt that the narcotic drug was found in their room. The key question to ask is: who was in possession of the drugs? This question is relevant because the accused persons herein and other people occupied the room. Cross-examination of the investigator brings to light this

issue. This is an excerpt of what transpired during the cross-examination of the Investigator.

...

Q: Before this court, your whole case is that because dried leaves suspected to be Indian hemp were found in the accused room, means they were all using the narcotic plant. Is that the case?

A: That is so.

Q: You will agree that it could have been one of them smoking to the exclusion of the others?

A: That is so but intelligence gathered from the hotel premises indicated that they were all in the act.

Q: This your intelligence could not pinpoint which of them was smoking the Indian hemp found in the room, not so?

A: Yes.

Q: You agree that that same intelligence informed you that the accused were suspected drug peddlers?

A: Yes.

Q: You just agree that the quantum found in the room could not support that they were peddlers, not so?

A: Yes. It's for this reason that the accused were not charged with distribution of narcotic drugs because the quantity we found indicated to us, that they were users than peddlers.

...

Q: I further suggest that it could have been A1 alone who was smoking dried leaves to the exclusion of the other persons.

A: Yes.

Q: You will equally agree that it could have been A2 or A3 who used the plant to the exclusion of the other persons.

A: Yes.

Q: You will agree that you have no evidence linking any of the accused persons to the use of the dried leaves suspected to be Indian hemp.

A: No. Per the intelligence gathered, earlier on.

Q: You have no evidence that proves that any of the accused was the one smoking the leaves you recovered from room 140?

A: No. I leave that the determination of the court

- The evidence establishes that the two other ladies also occupied the room. PW2 in his testimony testified that there were other occupants in the room occupied by the accused. PW2 affirmed that he did not see any of the accused persons in possession of the drug on the day of arrest.

According to PW2, he *“perceived the scent.”* He was asked by Counsel for the accused: *In respect of the Indian hemp that was found on that day, you cannot tell which of them was using it – the day of the arrest?* He answered: *The day of the arrest, I did not see them smoking. Per the taxi driver’s complaint, I realized that I had to act quickly. That day I did not see them smoking but when we went there, we perceived the scent.* Pw2 was further asked: *You agree with me that you have no evidence proving that on 30th March 2022, A1 or A2, or A3 was smoking Indian hemp in your room based on what you said the day you went to report?* He answered: *“No. I did not see them smoking. I perceived the scent and called for their arrest.”*

- In this case, the drug was not recovered from any of the accused persons. No evidence was led to establish who was actually in possession or control of the drugs. Could it be the ladies? Could it be any of the accused? Could it be all the

accused persons? The prosecution did not lead any evidence to resolve this controversy/ doubt.

In the case of **The Republic V. Godsway Dzomatsi Criminal Appeal Suit No: H2/13/15** 18th February 2016 Justice Dzamefe J.A define possession as follows:

What is possession in law: Possession is defined as the physical detention coupled with the intention to hold the thing detained as one's own. The continuing exercise of a claim to exclusive use of a material object. Possession has two elements;

i. The physical possession of the thing

ii. The animus possidendi, the intention to appropriate to oneself the exclusive use of the thing possessed. Constructive possession is possession in contemplation of law as opposed to defacto possession or actual possession in fact.

Possession is prima facie evidence of ownership. "Possession is nine-tenths of the law" means that possession is good against all the world except a person with a better right example the true owner.... It is now settled on the authorities that, for the prosecution to succeed in establishing the guilt of the accused person charged under section 2(1) of PNDCL 236 for possession of a narcotic drug, it must lead credible evidence to prove the following ingredients;-

- 1. That the accused person had physical or constructive possession or control of a narcotic drug.*
- 2. That the accused had knowledge of the presence as well as the nature and quality of the drug.*

*Where prosecution has successfully proved possession then the accused assume the burden of proving that the said possession was upon a licence issued by the Minister responsible for Health or upon any legal excuse. See **Ellis Tamakloe & Anor V. The Republic [2008/09] 19 MLRG 189 CA.***

- As indicated no evidence was led by the prosecution to establish who was/ were in actual possession or control of the particles of dried leaves/ drugs. The prosecution could not prove its case beyond reasonable doubt; they could not establish the essential ingredient of the offence. In this circumstance, the accused persons are hereby acquitted.

(SGD)
H/H EVELYN E. ASAMOAH (MRS)
CIRCUIT COURT JUDGE