

**IN THE CIRCUIT COURT 3 ACCRA HELD ON TUESDAY 3<sup>RD</sup> MAY 2023 A.  
D. BEFORE HER HONOUR SUSANA EDUFUL (MRS), CIRCUIT JUDGE**

**CASE NO. D21/172/2021**

**REPUBLIC**

**VRS**

**FRANCIS AKWESO**

**RULING ON SUBMISSION OF NO CASE TO ANSWER**

The Accused Person has been charged with Trespass to Land contrary to section 157 of Act 29 1960.

**BRIEF FACTS:**

The brief facts of the case as given by the Prosecution are that The Complainant is Nadar Dib and the Managing Director of Universal Housing Ltd. in Accra. The Accused Person, Francis Akweso is a Carpenter residing at North Kaneshie in Accra. On 22nd November 2016, the Complainant and his company acquired a parcel of land measuring 0.25 acres with and uncompleted structure on it situate and lying at North Kaneshie from the State Housing Company Ltd. The Complainant proceeded to Lands Commission and registered the land in his Company's name. The Complainant moved to the site to start

his development activities and met the accused person on the property. The accused person was requested to vacate the property after he informed the Police that he has no document to the property. The Accused Person was requested to vacate the property after he informed the Police that he has no document pertaining to the property though he has laid an adverse claim to it. The investigation was extended to the lands commission in Accra where it was established that the said property was for State Housing Company Ltd and duly granted to the complainant and his company in 2016. The Accused also failed to identify the chief who granted him the property without documentations. After investigation, he was charged.”

The Accused pleaded not guilty to the charge levelled against him on December 14, 2020.

#### **THE LAW ON SUBMISSION OF NO CASE**

The Criminal Procedure and Other Offences Act, 1960 (Act 30) is the law that guides the Court in any criminal trial in Ghana. **Section 173 and 174(1) of Act 30** provides as follows:

**173.** *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.*

**174 (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 enter his defence and shall remind the accused of the charge and inform the accused of the right to give evidence personally on oath or to make a statement.*

From the law stated above, it is clear that even without the prompting of the accused persons, this Court is obliged by law to consider, at the close of prosecution's case, whether sufficient evidence has been offered to prove every essential element in the offence charged. On 28-09-2020 the Counsel for the defence filed a written submission of no case on behalf of the accused persons which has been read and considered in this ruling.

To determine whether or not a case has been sufficiently made by the prosecution to justify this Court to invite the accused persons to open their defence, I find it necessary to set out the scope of the burden that is cast on the prosecution to discharge at this stage. That is to say, whether the prosecution has been able to establish a prima facie case against the accused persons in respect of each of the offences charged.

The settled position of the law as espoused in several authorities decided by the Ghanaian Courts is that at the close of prosecution's case, a prima facie case ought to have been established. **MALI V. THE STATE** [1965] GLR 710; **THE STATE V. SOWAH** [1961] 2 GLR 745; **MOSHIE V. THE REPUBLIC** [1977] 1 GLR 258; **APALOO v. THE REPUBLIC** [1975] 1 GLR 156; **ALI KASSENA V. THE STATE** [1962] 1 GLR 144 and recent cases such as **TSATSU TSIKATA V. THE REPUBLIC**

[2003-2005] 2GLR 294 and **MICHAEL ASAMOAH & ANOR v. THE REPUBLIC** Suit No. J3/4/17 dated 26th July, 2017, where the Supreme Court speaking per Adinyira JSC stated the law thus:

*“Furthermore, the standard of proof borne by the prosecution at this stage cannot be proof beyond a reasonable doubt, as held in the case of Tsatsu Tsikata v. The Republic [2003-2004] SCGLR 1068”*

At the close of prosecution’s case, the evidence led should be capable of displacing the presumption of innocence of the accused persons. And, where the evidence has not been able to displace this presumption, it means that a case has not been sufficiently made out to justify the court to call on the accused to open his defence. SEE the ruling of the High Court in the case of **THE REPUBLIC v. EUGENE BAFFOE-BONNIE & 4ORS** Suit No. CR/904/2017 dated 23rd May, 2019.

What will necessitate a discharge and an acquittal of the accused persons, at this stage is when the following are present;

1. That there has not been sufficient evidence to prove the essential elements in the offence charged.
2. That the evidence adduced by the prosecution had been so discredited as a result of cross examination that no reasonable tribunal could rely on that evidence.
3. That the evidence offered by the prosecution is so manifestly unreliable that no reasonable tribunal could safely convict upon it.

4. That the evidence is evenly balanced, that is to say, the evidence is susceptible to two likely explanations- one consistent with guilt, the other consistent with innocence.

When any of the above elements are made out, the court must acquit the Accused Persons.

#### **INGREDIENTS OF THE OFFENCE:**

For the charge of **Trespass to Land, Section 157 of Act 29 1960** provides that “whoever (a) unlawfully enters in an insulting, annoying, or threatening manner upon any land belonging to or in the possession of any other person;

(b) unlawfully enters upon any such land after having been forbidden to do so or (c) unlawfully enters and remains on any such land after having been required to depart therefrom or (d) having lawfully entered upon any such land misconducts himself in an insulting , annoying or threatening manner: or (e) having lawfully entered on any such land, remains thereon after having been lawfully required to depart therefrom, shall on the complaint of the owner or occupier of the land, be liable to a fine ...

To succeed the prosecution must prove the following:

- i. The entry on the land by the accused person
- ii. The Accused person must not be the owner or occupier of the land.

#### **THE EVIDENCE OF PROSECUTION**

The Prosecution called 3 witnesses, they are Edward Yaw Awuah head of the Estate Management Service State Housing (PW1), Nader Dib, the Managing Director of Universal Housing Company Ltd the complainant (PW2) and Detective Inspector George Amanor (PW3).

The prosecution's case is that the land in issue is situated at North Kaneshie. PW2 Nader Dib is the Managing Director of Universal Housing Company Ltd. Prosecution stated that the company acquired the land Plot No. 264 and measuring 0.25 acres from the State Housing Company who had a lease over a portion of land at North Kaneshie including the subject matter property. The State Housing Company Ltd gave notice to all squatters to vacate their portion of land. State Housing Company alienated the land to the Complainant Company. The Complainant company registered the land at the Lands Commission Secretariat in the name of the company. The complainant found Accused who is a squatter on the land. PW1 notified Accused to vacate the land but he failed to do so. The Complainant then reported the matter to the Police. Prosecution attached the following documents in evidence. Land Title Certificate, Exhibit A series

1. Search at Lands Commission dated December 22 2016
2. Documents (correspondence) from state Housing Company, Exhibit C
3. Photographs depicting the land, Exhibit D
4. Lands Commission (PVLMD) document Exhibit E
5. Search Report received from the Lands Commission dated December 22, 2016, Exhibit F
6. Investigation caution statement of Accused, Exhibit G
7. Charge statement of Accused Exhibit H
8. Search by Ghana Police Service, Exhibit J

From the entire evidence, Prosecution tendered exhibit A, a land title Certificate to prove that Universal Housing Company Ltd has obtained title certificate to the land in issue. Again, prosecution tendered exhibit B to show that the whole site per the attached cadastral plan is a subject matter of an Executive Instrument dated September 25, 1967 acquired for State Housing Company the

Complainants grantor. It is prosecution's case that the Complainant is the owner of the land in issue and the Accused has trespassed on the land. Prosecution tendered exhibit D to show Accused occupies the land in issue. Per exhibit G which is the investigation caution statement of Accused he states "I am not trespassing on the land as alleged. I am laying claim to the property as the owner". This piece of evidence is an admission on the part of the Accused that he is occupying the land in issue and also claim ownership of the same piece of land. The burden then shifts to the Accused to raise a doubt in the mind of the court that he is the owner and not the Complaint or the Complainant is not the owner of the land in issue.

I am of the opinion that the Prosecution has been able to establish a prima facia case against the Accused. The Accused has a case to answer.

**under section 174(1) of the Criminal and Other Offences**

**(Procedure) Act, 1960 (Act 30)**, 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 enter his defence and shall remind the accused of the charge and inform the accused of the right to give evidence personally on oath or to make a statement.

The court hereby holds after considering the prosecution's evidence that the Accused Person has a case to answer and accordingly call upon him to do so.

**PROSECUTOR**

**CHIEF INSPECTOR PRINCESS TETTEH BOAFO LEGAL**

**REPRESENTATION**

**THEOPHILUS CUDJOE FOR THE ACCUSED**

**H/H SUSANA EDUFUL (MRS)**  
**(CIRCUIT COURT JUDGE)**