

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT  
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA  
ON FRIDAY, 28<sup>TH</sup> APRIL, 2023

SUIT NO. D18/05/23

THE REPUBLIC

VRS

ISAAC YAW MENSAH

---

JUDGMENT

---

The accused person was arraigned before this Court on four counts of unlawful possession of narcotic plants for use, contrary to *Section 41 (2) of the Narcotic Control Commission Act, 2020 (Act 1019)*.

The particulars of offence are that on the 7<sup>th</sup> day of May, 2022 at Kpone in the Tema Metropolis and within the jurisdiction of this court, he had in his possession a quantity of narcotic plant soaked in a liquid substance, one plain ploythene sachets containing twenty nine silver foil wrappers of a hard black narcotic plant, one plain polythene sachet containing twelve (12) plain polythene wrappers of narcotic plant and one multicoloured polythene bag containing a quantity of narcotic plant all without lawful authority.

The accused person elected to speak Fante and after the charges were read and explained to him in his preferred language, he pleaded guilty simpliciter to all four counts. The brief facts of the case as presented by prosecution are that the complainant, Superintendent Herbert Sosu is the District Crime Officer for the Kpone District police command while accused person Isaac Yaw Mensah aged 29 is a mason and resides at Kpone Leonardo Hotel area.

On Saturday, 7<sup>th</sup> May 2022, at about 3:12 pm, the complainant in charge three men acting upon intelligence arrested the accused person together with a quantity of plant materials soaked in a liquid substance, one (1) plain sachet containing twenty-nine (29) silver foil wraps of a hard black substance, one (1) plain polythene sachet containing twelve (12) plain polythene wraps of plants materials and one (1) multi-colored polythene bag containing a quantity of plant material, all narcotic plants (marijuana) with a report that, during his arrest, a search was conducted in the place of abode of the suspect in his presence and the above mentioned exhibits were retrieved.

Investigation caution statement was obtained from the suspect in the presence of an independent witness. After that, the exhibits were sent to the Police Forensic Laboratory, Accra, and the test result came out to be positive for narcotic plants (Cannabis). The accused person was subsequently charged with the offence and put before this Honorable court.

In order to ascertain if the accused person was compos mentis, understood the plea of guilt and had also pleaded guilty voluntarily, I asked him the following questions;

*BY COURT: How are you doing?*

*A/P: By the grace of God, I am doing well.*

*BY COURT: How old are you?*

*A/P: I am 29 years old.*

*BY COURT: Are you educated and if so, to what level?*

*A/P: Yes, I completed Senior High School.*

*BY COURT: Do you understand the proceedings so far?*

*A/P: Yes, please. I understand.*

BY COURT: *Without prejudice, have you ever suffered from any mental derangement?*

A/P: *No. However, I fell ill and it was a spiritual issue due to work. I am well now.*

BY COURT: *Again, without prejudice, have you ever or do you currently administer any narcotic substance to yourself?*

A/P: *Yes. I was suffering from asthma and someone – an old man advised me to be drinking marijuana with water.*

BY COURT: *You have pleaded guilty simpliciter to all four counts. Do you understand what it means to plead guilty?*

A/P: *Yes, please.*

BY COURT: *In your own words, please explain what it means.*

A/P: *It means I have done it per the charges.*

BY COURT: *Is your plea of guilt voluntary.*

A/P: *Yes, please.*

BY COURT: *Has anyone including the prosecutors, the investigator, the police at the police station where you were taken to, any lawyer or court staff induced you to plead guilty to the charges either under duress or the threat thereof or the promise of a reward for your plea of guilty?*

A/P: *No, my lord.*

BY COURT: *Has anyone including I myself, the court staff, the registrar, the staff at the registry, any police man, the police investigator, any lawyer or anyone for that matter demanded from and/ or obtained from you any property including money for the purpose of handing same to me for you to receive a lighter sentence for your plea of guilty?*

A/P: *No please.*

BY COURT: *Do you agree to the fact as read and explained to you by the state?*

A/P: *Yes, My Lord.*

Being convinced that the accused person per his answers was *compos mentis*, understood the plea of guilt and had made it voluntarily, I proceeded to convict him on all four counts.

### **PRE SENTENCING**

BY COURT: *Prosecution, is he known?*

Pros: *No, my lord.*

BY COURT: *Convict, do you have any grounds of mitigation that you would like me to consider?*

Convict: *My lord, I plead with the court. It was due to my illness that I administered the drug. If not, I would not have done so.*

*Jasper Doe (as a friend of the court): My lord, I am an attorney in the office of the Attorney General. Principal state attorney. My lord, the state prosecutes and does not persecute. Looking at how the convict has spoken, I am of the view that a custodial sentence for such an offence would only increase the number of prisoners in the prisons and not be of any help to the convict. My lord, the law is in your bosom and I pray that the court gives what it can to the convict.*

*Wayoe Ghanamanti (as a friend of the court) My Lord, I associate myself with the submission of my learned friend and pray for mercy for the convict.*

### **SENTENCING**

I sentenced the convict to a fine of 200 penalty units on count one, two, three and four. The terms were to run concurrently and he had till the 11<sup>th</sup> of April, 2023 to pay the fine or in default, serve a three month term of imprisonment. He was also ordered to enter

into a self-recognition bond to keep the peace and be of good behaviour for a period of six (6) months. In default, he was to serve a one (1) month term of imprisonment. I reserved the full reasons for my sentence to today. I hereby proceed to deliver the reasons.

*Kpegah J.* (as he then was) in the case of *Impraim v. The Republic [1991] 2 GLR 39-47* stated that in considering the sentence to be given to an accused either upon first trial or during appeal, the courts had to take into consideration ‘the gravity of the offence taking into account all the circumstances of the offence. In this wise, regard must be had to such matters as the age of the offender, his health, his circumstances in life, the prevalence of the offence, the manner or mode of commission of the offence — whether deliberately planned and executed — and other like matters.’

The second schedule of the *Narcotic Control Commission Act, 2020 (Act 1019)* provides that upon conviction for the offence of possession of a narcotic substance where the said substance was for personal use, the sentence is a fine of not less than 200 penalty units and not more than 500 penalty units. In default, the court may sentence the convict to a term of imprisonment not exceeding five (5) years.

The convict is a first time offender as indicated by prosecution. The general position in applying the reformatory element of the criminal justice system, is that unless mandated by statute, the courts in considering an appropriate sentence, should consider a non custodial sentence for a first time offender.

According to *Taylor J* (as he then was) in the case of *Haruna v. The Republic [1980] GLR 189-192* “when young men (such as the appellant) have had their first brush with the law, it was essential in the interest of the reformatory element in criminal justice that

they be not sent to prison unless a prison sentence was a mandatory legal requirement. If a prison sentence was not mandatory, then as a general proposition, unless there were special circumstances calling for a custodial sentence, the courts must avoid incarcerating young offenders”.

The convict is 29 years old and falls within the categorization of young person. As a young person, it is in the “interest of the reformatory element of criminal justice that he not be handed a custodial sentence”.

Convict also pleaded guilty at the earliest possible stage thereby saving prosecution from having to expend time and scarce state resources to prove his guilt. He appears quite remorseful and even though he has no proof, has indicated that he was using the narcotic substances for medical purposes.

Hitherto to the enactment of *Act 1019*, the punishment for unlawful possession of narcotic drugs even where the court found that it was for use was a mandatory term of imprisonment and a fine. The fact that the lawmaker has reduced the punishment for the offence drastically to a fine and a custodial sentence only in default of the payment of the fine in the New Act manifests an intention not to incarcerate offenders.

It is upon these considerations that I sentenced the convict to a fine of 200 penalty units on all four counts to run concurrently or in default, a three month term of imprisonment and also for him to enter into a self recognizance bond to keep the peace and be of good behavior for a period of six months or in default, serve a one (1) month term of imprisonment.

**(SGD)**  
**H/H BERTHA ANIAGYEI (MS)**  
**(CIRCUIT COURT JUDGE)**

ASP STELLA ODAME FOR THE REPUBLIC PRESENT