

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE, LAW COURT COMPLEX
(CRIMINAL COURT '2') HELD IN ACCRA ON 31ST DAY OF OCTOBER
2023

CORAM: HER LADYSHIP JUSTICE MARIE-LOUISE SIMMONS (MRS)
JUSTICE OF THE HIGH COURT

CASE NO. CR/0222/2021

THE REPUBLIC

VS

1. ERIC KOJO DUAH @ SAKORA

2. MICHAEL OSAFO ANI @ NASTOWA

JUDGMENT

The Accused persons were charged with the offences of murder contrary to **Section 46 of the Criminal Offences Act, 1960 (Act 29)** and abetment of crime; namely murder contrary to **Section 20 (1) and 46 of the Criminal Offences Act, 1960 (Act 29)**.

The particulars of offence are that, the deceased, General Sergeant (G/Sgt.) Michael Dzamesi and General Lance Corporal (G/L/Cpl.) Awal Mohammed were police officers stationed at the Motor Transport and Traffic Directorate (MTTD), Kasoa. On 28th August 2019, the deceased and other officers of the MTTD, Kasoa were sent out for Task Force duties on the Kasoa Winneba Highway. At about 12:23pm on the same date, the team stopped an unregistered blue/black tinted glass Toyota Camry driven by the 1st Accused person, with three (3) other occupants including the 2nd Accused person on board for a routine check.

However, the 1st Accused person failed to stop. The late G/Sgt. Michael Dzamesi who was the service driver in-charge of service vehicle with registration number, GP-3632 together with G/L/Cpl. Mohammed Awal pursued the unregistered Toyota Camry. The deceased officers managed to intercept the unregistered Toyota Camry and the occupants few metres away from the KAAF University old block around the Budumburam-Aprah road.

Subsequently, the late G/Sgt. Michael Dzamesi ordered the 1st Accused persons to come out from the vehicle which he did. The two deceased officers also alighted from the service vehicle and in an attempt to apprehend the Accused persons, a struggle ensued between the 1st Accused person, Eric Kojo Duah and the deceased officers particularly the late G/Sgt. Michael Dzamesi.

In the process, the 1st Accused person ran back to his vehicle and the 2nd Accused person handed over a pistol to him. The 1st Accused person suddenly shot at G/L/Cpl. Awal Mohammed on the left side of his ribs and his left shoulder. G/Sgt. Michael Dzamesi sensing danger decided to run for his dear life but the 1st Accused person chased him and shot further at him. Even with the gunshot wounds, G/Sgt. Michael Dzamesi continued to run ostensibly to take cover in a nearby grocery shop but the 1st Accused person pursued him into the shop and shot at him several times in the head killing him instantly.

G/L/Cpl. Awal Mohammed who had sustained gunshot wounds was rushed to the Police Hospital for treatment but was pronounced dead shortly on arrival. The 1st Accused person sped off in the unregistered blue/black Toyota Camry with 2nd Accused person on board as they fled the scene of the incident. They later abandoned the vehicle around Kokrobite and ran away. A search conducted in the abandoned vehicle revealed a registered document of a rigger pistol which bore the name of the 1st Accused person. Based on these facts, the Accused persons were arraigned before this Honorable Court for trial.

THE ANTECEDENT OF THE CASE

The Bill of Indictment was filed on the 3rd July 2019 and the Accused were committed to stand trial on the 23rd July 2020. The trial commenced at the High Court differently constituted on the 4th May 2021 when the pleas, of the Accused persons were taken, both Accused pleaded not guilty on all counts. Due to the difficulty in obtaining jurors, there was eventually a jury empaneling on the 11th November 2021 and the jury was addressed by both the Prosecution and defense attorneys on the 24th November 2021. The Prosecution filed its disclosure documents and CMC was conducted and completed on the 22nd February 2022. Evidence of PW1 was taken on the 30th November 2022 and the witness was further cross examined on the 1st May 2022. The trial judge was later transferred with a new judge replaced. A decision was made on the 8th May 2023 to restart the case with the consent of both counsel for the prosecution and the defense due to the absence of a juror from the case.

Subsequently, the Court was informed by counsel for A1 about attempts at Plea Bargaining with the prosecution for A1 to plead to Manslaughter instead of Murder. The negotiations broke down but later restarted.

On 31st October 2023, 1st Accused person came under **Section 239 of Criminal and Other Offences Act, 1960 (Act 30)** and entered into a plea agreement with the Prosecution and did plead "Not Guilty" to murder but "Guilty" for Manslaughter and was convicted on his own plea.

MITIGATION

The Court upon reliance on **Section 293 of Act 30** invited the counsel for the convict to put in words of mitigation. In mitigation, counsel stated that the 1st Accused/convict herein is a first time offender had had no brush with the law, he did not waste the time of the Court, he has also learnt his lessons from being in custody for a long time, from August 2019 to date, until the incident and the convict had been a responsible citizen

going about his duties normally. He therefore prayed that the Court to give him an opportunity to come back to the society as soon as possible to continue his good deeds to the Republic.

The Prosecutor on her part stated that she finds it a great relief that the 1st Accused person has admitted to the offence of killing two (2) police officers who were in their line of duty. However, the offence committed by the 1st Accused person are grave and it should attract a punishment that is deterrent enough to likeminded persons. She further prayed that the sentence imposed should take effect from the date of sentence in spite of the time the 1st Accused person has spent in custody.

THE SENTENCE

I have heard and considered counsel for the convict on mitigation as well as the Prosecution on the aggravating factors. I have also listened to a family member of Michael Dzamesi one of the Deceased Policemen, one Peter Koku Dzamesi to the effect that he left behind six (6) children.

On Plea Bargaining under **Section 239 of Act 30**, I refer to the case of **ALHAJI YUSIF ALHASSAN ALIAS OBOLO VS. THE REPUBLIC (REPORTED IN DENNIS LAW AS 2016 DLCA 4525) DATED 29TH FEBRUARY 2016.** The Court of Appeal in explaining the practice of Plea Bargaining under **Section 239 (2) of Act 30** stated inter alia as follows:

“ ... the procedure as described above seems simple but in practice it can be confusing. It can be procedurally confusing because it is not the usual case of an Accused changing his plea from not guilty to guilty on the same charge or indictment. In the normal change of pleas, the same charge or indictment is read over and explained to the Accused person who pleads to it. But in a plea bargain, the offer to plead guilty to a lesser offence not charge in the indictment

is made by the Accused or his counsel and if the offer is accepted by the prosecution, the bargain is deemed struck and enforced by the Court. A new charge or indictment is not prepared for the Accused to plead to."

The principles and criteria for sentencing have been enumerated and held in cases such as ADU BOAHEN VS. THE REPUBLIC (1972) 1 GLR 70 and KAMIL VS. THE REPUBLIC (2011) SCGLR 300. As follows:

1. **The seriousness of the offence**
2. **The premeditation with which the criminal plan was executed**
3. **The prevalence of the crime within the locality in particular and the country in general**
4. **The degree of revulsion felt by law abiding citizens of the society**

Pursuant to **Article 14 (6) of the 1992 Constitution**, I have considered that the 1st Accused person has spent about 5 years in lawful custody. The mitigating factors per my view are that he is a first-time offender and this process of plea bargaining which he has chosen has reduced the burden of the Court, and on the Prosecution to prove the case to the end of it. These are mitigating factors the court have considered.

Per the convict's Investigation Cautioned Statement, he was 32 years at the time of the incident, therefore he was not a juvenile or a young offender, in that regard age cannot be a mitigatory factor for him.

I must state that personally, I have not seen any sign of remorse shown by the 1st Accused person in this Court. It has always been his family members and his lawyer who have made attempts at reconciliation with the deceased families. The nature of the offence was such in my view, a brazen disrespect for authority.

For a civilian to shoot two (2) policemen on the street, not once, but about twice each leading to their death, this is a threat to public safety and security. From the facts, the convict had actually committed some road traffic offence for which the police were

pursuing him. For him to have shot both of them on the street with onlookers and passersby was dangerous.

I am obliged to take into consideration the Public interest and the degree of revulsion felt by law abiding and right thinking Ghanaians into consideration which I am doing and I refer to the case of **AMANIAMPONG VS. THE REPUBLIC (UNREPORTED) C.A DATED 28TH MAY 2014**. Having considered all these including the sentencing guidelines, I will sentence the 1st Accused/convict to 20 years imprisonment IHL on both counts to run concurrently to take effect from today.

I am unhappy that the Ghana Police Service since I took over this case to my knowledge have shown no interest in this matter. 1st Accused/convict has the right to appeal, he has 30 days from today.

(SGD)

**JUSTICE MARIE-LOUISE SIMMONS (MRS)
(JUSTICE OF THE HIGH COURT)**

COUNSEL:

**NANA AMA PREMPEH (SSA) WITH VIVIAN OSEI-TUTU (SSA) FOR THE
REPUBLIC.**

**AUGUSTINES OBOUR FOR THE 1ST ACCUSED PERSON AND HOLDING
BRIEF FOR ISAAC OKYERE KUMAH FOR 2ND ACCUSED PERSON.**