4-03-2024

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE HELD AT NKAWKAW – EASTERN REGION ON MONDAY THE 4TH DAY OF MARCH, 2024: BEFORE HER LADYSHIP JUSTICE CYNTHIA MARTINSON [MRS], HIGH COURT JUDGE

SUIT NO. D15/04/2023

PRINCE DENKU

VERSUS

THE REPUBLIC

PARTIES

Appellant in lawful custody.

LEGAL REPRESENTATION

Cyril Boateng Keteku Esq. for the Respondent present.

Macbridge Yoofi Hayford Esq. for the Appellant absent.

JUDGEMENT

The Appellant was charged with one Kofigo who is at large, with two counts of **Conspiracy to Commit Crime to Wit Robbery and Robery** at the Circuit Court, Mpraeso presided over by His Honour Stephen Kumi Esq. The Appellant pleaded guilty to both offences and was sentenced to 15 years imprisonment to run concurrently. For the purposes of this Appeal, A1 the appellant herein will be referred to as the **Appellant**. The content of the Charge sheet is as follows:

Conspiracy To Commit Crime To Wit Robbery; Contrary To Sections 23 And 149 Of The Criminal Offences Act, Act 29 OF 1960.

PARTICULARS OF OFFENCE

1. *PRINCE DENKU; Loading Boy – 24 years, 2. KOFIGO; Unemployed: For that you on the 20th day of November 2022 at Donkorkrom township near "Bush Drinking Spot" in the Eastern Circuit and within the jurisdiction of this court, did agree or act together with a common purpose to commit a crime to wit robbery and causing harm.*

COUNT TWO

STATEMENT OF OFFENCE

Robbery; Contrary to Section 149 of the Criminal Offences Act, Act 29 of 1960.

PARTICULARS OF OFFENCE

2. *PRINCE DENKU; Loading Boy – 24 years, 2. KOFIGO; Unemployed: For that you on the 20th day of November 2022 at Donkorkrom township near "Bush Drinking Spot" in the Eastern Circuit and within the jurisdiction of this court, with the intent to rob Bush Maanu, did attack him with a stick and stone respectively and succeeded in stealing his Techno Pop 5 Pro mobile phone valued at GH¢800.00..*

FACTS OF THE CASE AS NARRATED BY THE PROSECUTION

BRIEF CASE: Complainant Bush Maanu is a cattle herdsman who lives at Ntonaboma. The appellant [A1], Prince Denku and A2, one Kofigo are loading boys and unemployed respectively and both reside at Donkorkrom. On 20/11/2022 at 08:30 pm, the complainant was from the Donkorkrom Yam market towards 'Bush Drinking Spot' with a Techno Pop 5 mobile phone in hand. The Appellant and another at large were around the above-mentioned drinking spot and saw the complainant walking alone with his cell phone Techno Pop 5 in hand. The appellant and one Kofigo at large then planned to snatch the mobile phone from the complainant. Kofigo who is at large was the first to attack the complainant by hitting his forehead with a stone and attempted collecting the cell phone from him. The Complainant struggled hard with A2 to prevent him from taking the phone. At that moment, the Appellant also came to hit the

Complainant's head with a stick making it easier for A2 to snatch the aforementioned mobile phone which was valued at GH¢800.00 from him and bolted. A2 was chased by some guys and out of fear he threw the phone away leaving the screen shattered and escaped. One of the guys picked up the phone and handed it over to PW2, Maxwell Kpogo who later brought same to the police. The Complainant felt unconscious and blood oozing from the wound on his head. The Complainant was rushed to the Presbyterian Hospital by some good Samaritans for treatment. PW3, Abdul Rahman Halidu reported the incident to the police and the Appellant was subsequently arrested. The Appellant was cautioned, and he admitted the offence in his cautioned statement. A Police Medical Report Form was issued to the medical officer to endorse. The Complainant later returned to the police; the medical form duly endorsed by a medical officer of the above-mentioned facility. After police investigation, the appellant was charged with the offences as stated on the charge sheet, whereas efforts are underway to get A2 arrested.

The Appellant pleaded guilty to the offences and was convicted of the charge of Conspiracy and Robbery and sentenced to 15 years IHL on each count to run concurrently.

Impugned with the conviction and sentence the Appellant filed a Notice of Appeal pursuant to leave granted him on 17/4/23 but the appeal was struck out on 12/10/23 for want of prosecution. The Appeal was subsequently relisted upon an application made to the court and was granted on 14/11/23.

The Relevant portion of the Notice of Appeal is as follows:

NOTICE OF APPEAL

1. THE DECISION COMPLAINED OF:

The entire judgement of the Circuit Court dated 12th January, 2023 convicting and sentencing the accused.

2. ***GROUND OF APPEAL:***

i. The conviction cannot be supported having regard to the record and the same has occasioned a substantial miscarriage of justice.

ii. The learned judge erred in law in his application of the law on conspiracy.

iii. The sentence is harsh and excessive.

iv. Additional grounds may be filed upon receipt of the record of proceedings.

5. RELIEFS SOUGHT:

i. To set aside the conviction and acquit the accused.

ii. To reduce the sentence.

It should be noted that just like an appeal in civil cases it is also a settled principle of law which admits of no controversy that an appeal in a criminal case is also by Re-hearing. In essence, what this means is that the Appellant court whenever an appeal comes up for hearing must consider its task as rehearing of the case. The Appellate court must put itself in place of the trial court and consider in detail whether the trial of the Appellant conformed to settled principles governing the proof of criminal cases by the prosecution and this must be based on settled time-tested principles of proof beyond a reasonable doubt. See **Kingsley Amankwah [alias spider] v. The Republic [Criminal app. No. J3/04/2019] 2021 SC [21 July 2021] Dotse JSC.**

In the Spider Case above, the learned jurist Dotse JSC [as he then was] listed the criteria that the Appellate court will embark upon when it is rehearing a criminal appeal as in the instant case. These guiding principles are:

1] In considering an appeal as one of rehearing, the Appellate court must undertake a holistic evaluation of the entire record of Appeal

2] This evaluation must commence with a consideration of the charge sheet with which the Appellant was charged and prosecuted at the trial court. This must involve the evaluation of the facts of the case relative to the charges preferred against the Appellant.

3] This also involves the assessment of the statute under which the charges have been laid against the Appellant and an evaluation of whether these are appropriate vis-a-vis the facts of the case

4] An evaluation of the ingredients of the offence preferred against the Appellant and the evidence led at the trial court. This is to ensure that the evidence led at the trial court established the key ingredients of the offence or offences preferred against the Appellant.

5] There must be an assessment of the entire trial to ensure that all the witnesses called by the prosecution lead evidence according to the tenets of the Evidence Act 1975, NRCD 323.

6] Ensure that the entire trial conforms to the rules of natural Justice.

7] An evaluation of all exhibits tendered during the trial, documentary or otherwise to ensure their relevance to the trial and in support of the substance of the offence charged and applicable evidence.

8] A duty to evaluate the application of the facts of the case, the law and the evidence-led trial vis-a-vis the decision that the court has given evidence.

9] To ensure that the basic principles inherent in criminal prosecution that is to ensure that the prosecution had proved or established the ingredients of the offence charged beyond reasonable doubt, against the appellant had been established.

10] In other words, the Appellant court, must ensure that even if the Appellant's defence was not believed it must go further to consider whether his story did not create a reasonable doubt either.

It should be noted that per the record, the Appellant did not go through full trial, this is because he pleaded guilty at the plea taken stage. The law is that an accused person is innocent until proven or has pleaded guilty, see **Article 19 [2]c of the 1992 constitution of Ghana.**

SUBMISSION BY COUNSEL FOR THE APPELLANT

The gravamen of counsel for the Appellant submission are as follows:

1] That the court failed to explain to the Appellant the nature of the charge and the procedure which follows the acceptance of the plea of guilty in violation of Article 19[1] of the 1992 constitution and Section 199[1]of Act 30.

2] There is no record that the trial judge captured the words of the Appellant constituting his plea of guilty as required by Section 171[3] of the Criminal and Other Offences [Procedure] Act 1960 [Act 30] in breach of Article 19[2] of the constitution.

3] That the conviction cannot be supported having regard to the record and same has occasioned a miscarriage of justice.

4] That Section 199[1] of Act 30 which captures basic principles under fair trials should be applied to both summary trials and trials on indictment without any distinction.

5] That the Appellant pleaded guilty by Mistake since he had no appreciation of the nature of his charges and the consequences and the procedure that followed the plea and therefore a breach against fair trial rules in the constitution, specifically Art. 19[1]

6] That the violation of the fundamental human right enshrined in the constitution will result in the nullity of the proceedings and any subsequent orders. He therefore submitted that the based on such infractions the guilty plea be invalidated.

7] That the Appellant was not represented by a lawyer at the court below.

The Respondent did not file any submission for the consideration of the court, as at the time of the delivery of this judgement.

Counsel for the Appellant abandoned his grounds II and III again no additional grounds were filed. However, having considered the grounds of Appeal argued by Counsel for the Appellant [disregarding the ones abandoned], the issues for determination are:

1] Whether the conviction is supported having regard to the record.

2] Whether or not there was fair trial at the court below

Addressing the first issue, I wish to consider the statute under which the charge was laid.

The Appellant was charged with conspiracy to commit Robbery and Robbery contrary to sections 23 and 149 of Act 29, the Criminal Offences Act.

From the charge sheet, it appears as if the Appellant was charged under the old definition of Conspiracy.

The current definition of conspiracy can be found in section 23(1) of the Revised Act 29, which states that "*Where two or more persons agree **to** act together with a common purpose for or in committing or abetting a criminal offence whether with or without any previous consent or deliberation, each of them commits a conspiracy to commit or abet the criminal offence*".

The new definition of conspiracy is therefore intentional conduct. The new definition has therefore changed the scope and the nature of the law on conspiracy in our criminal law.

Therefore, under the new definition of conspiracy, the persons must agree **to act** together to either commit or abet a crime.

Under the new definition, a person cannot be guilty of conspiracy in the absence of any prior agreement. Whereas, under the old definition, a person could be guilty of conspiracy in the absence of any prior agreement.

Under the new definition, the agreement and the acting together are conjunctive. Hence, the use of the preposition **to,** unlike the old definition where the agreement and the acting together were disjunctive, hence the use of the preposition **or** which means alternative.

See:

- **Agyapong v. The Republic [2015] 84 GMJ 142 CA**
- **The Republic v. Peter Kwame Gyasi [2014] 72 GMJ 167 CA**
- **Francis Yirenkyi v. The Republic [2016] 99 GMJ 1 SC**

The ingredients of conspiracy under the new definition are therefore as follows:

a) That it involves two or more people

b) They agreed to act together

c) That the agreement to act together was for a common purpose.

d) The common purpose was to commit or abet a crime.

See: **Richard Kwabena Asiamah v. The Republic [2020] 170 GMJ 510 SC,** and **Kingsley Amankwah (alias Spider) v. The Republic [2021] 173 GMJ 230 SC.**

It should however be noted that whether the Appellant was charged under the new or old definition of conspiracy the Appellant cannot win an appeal on that sole ground unless same has led to a substantial miscarriage of justice. See **Section 31 [2] of Act 459.**

Section 31 (2) of Act 459 the Courts Act reads that *"the court shall dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred or that the point raised in the appeal consists of technicality or procedural error or a defect in the charge of an indictment, but that there is evidence to support the offence alleged in the statement of offence in the charge or indictment or any other offence of which the accused could have been convicted upon that charge or indictment*."

Counsel for the Appellant did not proffer any submission to the effect that, the charge of Conspiracy under the old definition occasioned any miscarriage of Justice to the Appellant.

The appellant was also charged with one count of Robbery, contrary to **Section 149 of Act 29 as amended by Act 646[2003].**

In respect of the offence of Robbery, the law has criminalised it under **Section 149 of Act, 29 as amended by Act 646[2003].**

Under Section 149 of Act 29, a person who commits Robbery commits a First-degree felony.

Section 150 of Act 29 defines Robbery as follows:

"A person who steals a thing commits robbery".

a] If in and for the purpose of stealing the thing, that person uses force or causes harm to any other person or

b] If that person uses a threat or criminal assault or harm to any other person with the intent to prevent or overcome the resistance of the other person to the stealing of the thing.

This means, that for the prosecution to prove the offence of Robbery against the accused person, the prosecution must prove the following: it is important to establish the following ingredients by the prosecution.

1. That the accused stole something from the victim of the robbery of which he is not the owner.
2. That in stealing the thing, the accused used force, or harm or threat of any criminal assault on the victim.
3. That the intention of doing so was to prevent or overcome the resistance of the victim.
4. That this fear of violence must either be of personal violence to the person robbed or to any member of his household in a restrictive manner.
5. That the thing stolen must be in the presence of the person threatened.
6. That the identity of the accused regarding the commission of the offence should not be in doubt.

See: **Frimpong @Iboman V. The Republic (Supra)** and **Ntow V. The Republic [2007] 13 MLRG 130 CA.**

Robbery is basically stealing, and the intention of the accused is primarily to dishonestly appropriate as under section 120 (1) of Act 29 something from another person. The accused must not be the owner of the thing appropriated as required under section 122 (2) of Act 29. He must not have any claim of right to the property stolen. There must also be absence of consent from the owner as to its appropriation by the accused person. This means, all the elements of stealing must be present in cases of robbery.

See: **Abaka v. The Republic [2010] 28 MLRG 111 CA.**

It is the law that in criminal cases, the duty is on the prosecution to prove the allegation against the accused person beyond reasonable doubt. The prosecution has a duty to prove the essential ingredients of the offence with which the accused has been charged beyond reasonable doubt.

This burden of proof remains on the prosecution throughout the trial. It is only after a prima facie case has been established, that is a case strong enough to link the accused to the commission of the offence charged, that he will even be called upon to open his defence or give his side of the story.

See: **Amartey v. The State [1964] GLR 256 SC** and **Dexter Johnson v. The Republic (Supra).**

The 1992 Constitution as per article 19 (2) (c) presumes accused person innocent until he has pleaded guilty, or his guilt has been proven. This proof is defined under **section 11(2) and 13 (1) of the Evidence Act, 1975 (NRCD 323)** as proof beyond reasonable doubt.

It should be noted that in the substantive case, it is on record that the Appellant herein pleaded Guilty to all the charges, that exonerated the prosecution to prove the offences charged beyond reasonable doubt as required by law. See **Article 19 [2]c** which reads;
*"**a person charged with a criminal offence should-be presumed innocent until he is proven or has pleaded guilty".***
It should also be noted that the counsel for the accused person abandoned two grounds of appeal listed in the notice of appeal filed on 3/5/23. These are grounds ii and iii. These are as below;
i] The learned judge erred in law in the application of the law of conspiracy.
ii] That the sentence is harsh and excessive.
The learned Counsel did not proffer any submissions in respect of the two grounds consequently, it is deemed abandoned. See the following cases:

1] Adams Addy and Another v. Solomon Mintah Ackaah [J4/19/2021] 2021 [14th April 2021] Kulendi JSC.

2] Ama Serwa v. Gariba Hashimu and Another [14 April 2021] Kulendi JSC.

In ascertaining if the Judgement at the court below is supported by the evidence on record. It should be noted that the evidence is brief due to the Guilty plea on record. In the avoidance of doubt, I wish to reproduce what transpired on the 12th of January 2023 the very day that the Appellant's Plea was taken, convicted and sentenced.

COURT NOTE FOR THURSDAY 12TH JANUARY 2023

Time: 11:22 am

Accused Persons: A1 present.

A2 absent (at large)

Prosecution: Chief Insp. Beatrice Larbi - present.

A1: I understand the Twi language and I have been told of the legal effect of my plea.

Court: *Let the charges be read and explained in Twi to the accused (A1).*

COUNT 1

CONSPIRACY TO COMMIT CRIME TO WIT ROBBERY: Contrary to Sections 23 and 149 of Act 29/1960.

PLEA: A1: GUILTY

COUNT 2

ROBBERY: Contrary to Section 149 of Act 29/1960.

PLEA: A1: GUILTY

FACTS: *Read and explained in the Twi language to the A1 present and a copy attached to the charge sheet.*

EXPLANATION OF A1*: I have nothing to say. That is all I want to say.*

BY COURT: *The Accused (A1) is hereby convicted and found guilty on Counts 1 and 2 based on his own plea of guilty.*

PLEA OF MITIGATION OF SENTENCE*: My Lord, I pray for mercy. I am sorry. I will not do that again.*

SENTENCING: *The Convict is a first offender. He has spent some few months in lawful police custody. He did not waste the Court's time by a full trial. However, the court notes that such offences are prevalent within the jurisdiction of the Court. For the above reasons, the A1, Prince Denku is to serve fifteen (15) years I.H.L. on each of the counts 1 and 2; which are to run concurrently. It is hoped the sentence will deter him.*

The gravamen of the Appellant's Appeal is that the conviction is not supported on record and thereby the same has occasioned a miscarriage of justice to the Appellant.

It is trite that, **Section 171 of Act 30** regulates the procedure to be followed in taking pleas in summary trials. In the aforementioned section, **subsection [2]** reads

"A plea of guilty shall be recorded as nearly as possible in the words used, or if there is an admission of guilt by a letter under ***section 70 [1]*** *the letter shall be placed on the record and the court shall convict the accused person and pass sentence or make an order against the accused unless there appears to it sufficient cause to the contrary*."

It is the contention of counsel for the Appellant that, the words used by the Appellant were not recorded 'as nearly as possible ' contrary to statute. Counsel cited the case of **Gabriel Joanne v. The Republic [2012] 1 SCGLR 560** stating the dictum of Owusu JSC that, the judge was legally bound to record the plea as nearly as possible in the words used so that if there was any explanation or words used which rendered the plea of guilty inconsistent with the words added then the court was bound to enter a plea of not guilty and then proceed to try the case.

I must state that, the position of the law is what was amply stated by counsel for the Appellant.

I must also admit that, what the record has is that, the Appellant pleaded Guilty to both counts when the charges were read and explained to him in the Twi language and the trial judge did record same. The above record also has an explanation given by the Appellant when the facts were subsequently read and explained to him in the Twi language and the words of the Appellant recorded are ***"I have nothing to say that is all want [to say]".***

It is the contention of counsel for the Appellant that, nowhere in the proceedings did the court explain to the Appellant the nature of the charges brought against him and the consequences of his plea in adherence to **Section 199 [1] of the Act 30**. With due deference to counsel's argument, there is evidence on the record as narrated above that the substance of the charges was explained and read to the Appellant in the Twi language before his plea was taken. Besides, there is also evidence on record that the facts of the case were also read and explained to the Appellant in the Twi language. The Explanation rendered by the Appellant was also recorded in the face of the record in line with section 171 [2] of Act 30. Moreover, there is evidence on record that the then-unrepresented Appellant was actually informed of the legal effect of his plea. His words on record are:

"A1: I understand the Twi language and I have been told of the legal effect of my plea."

The contention of counsel is that the explanation of the legal effect of the plea or the nature of the charge and the procedure which follows the acceptance of the plea of guilty should have been done after the plea of guilty. This is not the position of the law in summary trials**. See Section 171 [1],** it reads:

"if the accused appears personally or by his counsel as provided under Section 70, the substance of the charge contained in the charge sheet or complaint shall be stated and explained to the accused or if the accused is not personally present to the counsel of the accused, and the accused or his counsel shall be asked to plead guilty or not guilty."

From the proceedings, the Appellant was duly informed about the substance of the charges contained in the charge sheet. It is the contention of Counsel that the Appellant

should have been told the nature of the charge and the procedure which follows the acceptance of the plea of guilty under **Section 199 [1] of Act 30.**

It should however be noted that, **Section 199 [1]** as canvassed by counsel for the Appellant has to do with guilty plea in indictable trials. It should be noted that, there are differences between guilty plea in summary trials and indictable trials. The guilty plea in summary trials requires the court to record the plea of the accused and any explanation offered by the accused as nearly as possible. See **Section 171 [3] of Act 30**, while the requirement in indictable offence excludes the recording of the explanation offered by the accused as nearly as possible, see **Gabriel Joane v. The Republic [2012] 1 SCGLR 560**. Also see **page 356 of CRIMINAL PROCEDURE AND PRACTICE IN GHANA 3RD Edition by Dennis D. Adjei.**

From the proceedings, I am left with no better conclusion to reach than to state that, the trial court conducted itself as required by law. He did explain the substance of the charges contained in the charge sheet and even proceeded to explain the effect of the plea, and also did record the Appellant Plea of Guilty, a subsequent explanation and the presentencing remarks made by the Appellant all as nearly as possible in the Appellant words.

The Procedure in **section 199 [1]** which counsel for the appellant is canvassing that same must equally apply in summary trials [like the instant case] requires the appellant to be informed of the nature of the charge and the procedure which follows the acceptance of the plea of guilty. I must state that, though there are some similarities in the procedure governing summary trials in **section 171[1]** and indictable trials in **199[1] of Act 30** they are not the same since trial on indictment and summary trials are dissimilar. The learned trial judge complied with the procedure as stated in **section 171 [1] [2] of Act 30** which mandates the trial court to state and explain the substance of the charge contained in the charge sheet before the plea among other requirements. I, therefore, hold in issue one that no omission from the record of the trial court has occasioned a miscarriage of justice to the appellant.

Whether there was a fair trial at the court below.

Article 19 [1] reads;

"A person charged with a criminal offence shall be given a fair hearing within a reasonable time."

The Black Law Dictionary 11th Edition defines Fair trial *"as a trial by an impartial and disinterested tribunal in accordance with regular procedures esp. a criminal trial in which the accused constitutional and legal rights are respected".*

In his book, **Criminal Law and Procedure and Practice in Ghana, Sir Justice Dennis Adjei at page 255** discussed the hallmarks of criminal justice jurisprudence to be fair trial and expeditious trial. He discussed that, fair trial commences from the time the accused is arrested or invited in connection with an offence. He said the principle of fair trial enjoins prosecution and the court before which the accused was arraigned to ensure proceedings shall be conducted in English but where the accused is not literate in English the state shall provide an interpreter at no cost to him. He continued that an accused who pleaded guilty to an offence in a summary trial is convicted on his own plea unless the facts do not support the charge.

Counsel for the Appellant submitted that there was no fair trial in this matter at the court below citing several regional and international instruments as well as local authorities to buttress his point. Counsel also submitted that the right to a fair trial is not only a universally accepted human right but has been elevated to a fundamental right that courts are enjoined to adhere to. Counsel finally concluded that the Appellant did not appreciate the procedure or consequences that followed the acceptance of his plea and therefore warrants the court to consider the appeal favourably.

Counsel made fetish of **section 199 [1] of act 30** contending that the section mandates the court to explain to the Appellant the nature of the charges and the consequences that follow the acceptance of the plea of guilty.

I must reiterate that same principles of fair trial of an accused person who has pleaded guilty are also outlined in **section 171 [1] [2] of Act 30**. As discussed earlier, it should be

noted that the procedure in summary trial and trial by indictment are not the same so it is not surprising that different sections of **Act 30** are designated for them. However, what is important is that in all these fair trial must play out in the procedure. In this case, the substance of the charge contained in the charge sheet was stated and explained to the Appellant and the plea of guilty recorded as nearly as possible in the words used by the Appellant, and even the legal effect of the plea was made known to the Appellant. It is woefully out of place for counsel to conclude that there was no fair trial. On record, it is evident that the Twi language was used in court.

Counsel made reference to the case of **Republic & 4 Others v. Eugene Baffoe-Bonnie, Suit No. J6/1/2018 GHASC [07/06/2018]** and concluded that, there should be no distinctions in the application of the right to fair hearings with regard to the mode of trial be it summary or trial on indictment. Much as I agree with counsel, it should also be noted that, the two modes of trials are not the same and in the Baffoe-Bonnie case referred to by counsel for the Appellant, the Supreme Court on the discussion on pre-trial disclosures noted that, pretrial disclosures ought to apply in both summary and trial of indictment. The court however noted that, the mode of criminal trials and the details with respect to their application of pretrial disclosures remained to be worked out in the context of concrete situations and by subsequent legislation. Thus the Supreme Court in that case recognised that, in concrete situations depending on the mode of trial, there could be peculiarities.

The court said through Sophia Adinyira JSC [as she then was]

*"We will therefore not be constrained by the provisions in **Act 30** as to a pretrial procedure known as committal proceedings under part IV and summary procedures under **Part III of Act 30**, as the said Act is subordinate to the constitution. Our interpretation which will be in general terms applies to all modes of criminal trials and the details with respect to their application remain to be worked out in the context of concrete situations and by subsequent legislation".*

It should be noted that, subsequent directives brought out by the supreme court to guide the trial court in administering pre-trial disclosures did not abolish the plea -

taking procedure in **sections 171 and 199 of Act 30**, though the pre-trial disclosures are the same. However, concerning the plea-taking procedure, there are differences with regard to the two mode of trials (summary trials and trial on indictment).

It should also be gleaned from the record that, this case did not even go through a full trial to warrant pre-trial disclosures. However, I am of the view that up to the time the guilty plea was taken, there was adequate disclosure at that stage. I am therefore clear in my mind that considering the record before me, there was a fair trial of the matter. It should be noted that the Fair trial principles as stated in Article 19 of the 1992 constitution of Ghana was adhered to by the trial judge. This is because the Appellant was given the opportunity to speak after the charge and the facts were read and interpreted to him. The appellant was given the opportunity to make a pre-sentencing statement and the Appellant spoke without telling the court that he did not appreciate what transpired in court. It is trite that the *audi alteram partem rule* is not always available to everyone who complains to have not been heard. See the case of **Republic v. High Court (land Division) Exparte Morton v F.K.A Company Ltd. J5/21/2016 (2016) unreported SC (28 July 2016) Pwamang JSC.**

The contention by counsel for the appellant that the proceedings or the record on the 12th of January 2023 were made in violation of fair trial is certainly incorrect. Having tried the matter in accordance with the law, by respecting the *Audi alteram partem* rule the proceedings or the record of the lower court can therefore not be nullified or set aside.

It should be noted from the discussion on fair trial that, there has not been any technical or procedural error that has occasioned a substantial miscarriage of justice as it is being postulated by counsel for the Appellant. See **Section 406 of the Criminal Procedure Act (Act 30)** which states;

Subject to this part, a finding, sentence or order passed by a court of competent jurisdiction shall not be reversed or altered on appeal or review on account of:

a] An error, omission or irregularity in the complaint, summons, warrant, charge proclamation, order judgement or any other proceedings before or during the trial or in an enquiry or any other proceedings under this Act, or

b] Unless the error, omission, irregularity or misdirection has in fact occasioned a substantial miscarriage of justice.

In fact, the Appellant was given all the relevant information pertaining to the charges brought against him at the court below.

In Conclusion, in the case before me, as I have already reiterated, the Appellant was given a fair hearing, the trial court worked within the ambit of **section 171 (1) [2] of the Criminal Procedure Act of Ghana, Act 30** and even granted that there was an irregularity in any part of the proceedings, I did not find any that occasioned a miscarriage of justice. The Appellant was given the opportunity to be heard after the substance of the charge was stated and read to him and he pleaded guilty in the Twi language that he understood. Besides, his plea and subsequent explanation after the fact was read to him were all recorded as nearly as possible in the words used by the Appellant. I would therefore dismiss the appeal as same has no merit and affirm the decision of the trial court.

(SGD.)

JUSTICE CYNTHIA MARTINSON (MRS)

HIGH COURT JUDGE