

IN THE CIRCUIT COURT OF JUSTICE HELD IN HO, VOLTA REGION
ON MONDAY, THE 20TH DAY OF FEBRUARY, 2023 BEFORE HIS HONOUR MR. FELIX
DATSOMOR, ESQUIRE, CIRCUIT COURT JUDGE

COURT CASE NO. D21/07/2022

THE REPUBLIC

VRS

KOFI KLUTSE alias WONDERFUL TIGER

J U D G M E N T

INTRODUCTION:

The accused person, Kofi Klutse alias Wonderful Tiger, was charged with the offence of unlawful use of human parts contrary to section 69(B)(b) of the Criminal Offences Act, 1960 (Act 29) as amended by the Criminal Offences (Amendment) Act, 2012 (Act 849). The said law provides as follows:

“A person who without lawful authority, the proof of which lies on that person, ...

(b) is in possession of human parts; ...commits a second degree felony and is liable on summary conviction to a term of imprisonment of not less than five years and not more than twenty-five years”.

The accused was arraigned before this court on 28th October 2021 on the allegation that sometime in the months of May and June 2021 at Sokode in the Volta Region of the

Republic of Ghana did have in his possession human parts to wit human bones without lawful authority and transported the human bones from Sokode through Ziope-Tumor to Abor, all in the Volta Region.

FACTS PRESENTED BY THE PROSECUTION IN SUPPORT OF THE CHARGE:

The facts presented by the prosecution in support of the case were that the police at Akatsi received a report from Torgbui Soku, a resident of Akatsi-Kpotame, that his son, Francis Soku, was missing and that he has been missing since 30 April 2020 together with his motorbike. According to the alleged facts, police investigations revealed that the accused had been captured on an MTN itemized bill to have communicated with Francis Soku (hereinafter described as the “missing person”) on the day the missing person got missing and that both the accused and the missing person were at Sokode together that day. The prosecution further alleged that the investigations further revealed that the missing person had received a text message at about 11:12:05 am at Sokode and that that time was contemporaneous both in real time and space with when the accused received a voice call at 11:12:53 am. According to the facts, the location showed that both the missing person and the accused received the text message and voice call respectively at Sokode per the itemized bill received from MTN. However, the missing person has since not been found. Sometime in or about the month of May 2020 at Sokode, the accused had in his possession some human bones which he exhumed from a place at Sokode with the assistance of one Godfred Petetsi and transported the said human bones in a fertilizer bag on a motorbike from Sokode through Ziope-Tumor to Akatsi and then to Abor. But at Ziope-Tumor, the accused showed the human bones to one Mumuni Adabra, a fetish priest who also doubles as a kente weaver, before the accused left with same to Abor. However, when the accused and Godfred Petetsi got to Akatsi, the accused gave money to Godfred Petetsi to transport himself alone. The accused then finally left to Abor with the human bones in his possession.

On 10 November 2021 when the plea of the accused was taken, he pleaded “*not guilty*” to the offence charged implying therefore that he has put himself in charge of the court. The prosecution was therefore required by law to establish the guilt of the accused beyond reasonable doubt. This is because by his plea, the accused was presumed innocent until the contrary was proved by the prosecution beyond reasonable doubt. See *Article 19(2)(c) of the Constitution, 1992*. I also refer to the case of *Philip Assibit Akpeena v. The Republic (2020) 163 G.M.J 32*, where the Court of Appeal speaking through Tanko Amadu, JA (as he then was) held that “where the accused pleads not guilty to a charge, he is deemed to have put himself upon his trial. The effect of this plea is that he has joined issues with prosecution not only by the mere denial of the charge as framed, but also a denial of all the ingredients of the said offence and that means the prosecution must lead evidence to prove every element of the offence represented in the charge.” See also the case of the Supreme Court case of *Osei Adjei & Another v. The Republic [2010-2012] 2 GLR 754 at 764*.

It must be observed that “proof beyond reasonable doubt” does not mean proof beyond a shadow of doubt but the prosecution is under obligation to produce sufficient evidence so that on the totality of the evidence presented, a reasonable mind could find the existence of the fact beyond a reasonable doubt. See *Philip Assibit Akpeena v. The Republic* cited *supra*, per Dennis Adjei, JA.

The prosecution can only prove the guilt of the accused beyond reasonable doubt if they proffer enough evidence to convince the court that the accused is guilty of the ingredients of the offence charged. This burden imposed on the prosecution by law is the highest burden the law can impose and it is in contra distinction to the burden a plaintiff has in a civil case which is proof on a preponderance of the evidence. What “beyond a reasonable doubt” means is that the prosecution must overcome all reasonable inferences

favouring innocence of the accused. Therefore, in case of a reasonable doubt, the accused is entitled to a verdict of not guilty. See *Richard Banousin v. The Republic* [2016] 94 GMJ 1, SC per Dotse, JSC.

Significantly, whereas the prosecution carries the burden to prove the guilt of the accused beyond reasonable doubt, there is no such burden on the accused to prove his innocence. At best, all that the accused is required by law to do is to raise a doubt in the case of the prosecution. See *Bruce-Konuah v. The Republic* [1967] GLR 611 and *Section 11(2) and (3) of NRCD 323*. However, the doubt which the accused is to raise must be real and not fanciful. *Miller v. Minister of Pensions* [1947] 1 All ER 372 at 373 per Denning J (as he then was) applies.

It must also be noted that the constitutional presumption of innocence of an accused person is not a conclusive presumption but a rebuttable one which is rebutted when the prosecution establishes a prima facie case against the accused. It is only then that the accused shall be called upon to raise a reasonable doubt as to his guilt. See *Philip Assibit Akpeena v. The Republic* supra per Dennis Adjei, JA.

THE CASE FOR THE PROSECUTION PRESENTED AT THE TRIAL:

In its attempt at discharging the legal obligation of proving the guilt of the accused beyond reasonable doubt, the prosecution called as many as five witnesses to testify in support of its case. The said prosecution witnesses were Godfred Petetsi, Dziedzorm Adzakpa, Mumuni Adabra, Francis Soku and Detective Inspector Japhet Prempeh. For the sake of convenience and brevity, I will hereafter refer to the prosecution witnesses as PWs 1, 2, 3, 4 and 5 respectively just to reflect the order in which they testified at the trial.

PW1, Godfred Petetsi, described himself as a welder living at Nyorgbortey near Akatsi and stated that he knows the accused person and that sometime in June 2020, the accused came to his house at Nyorgbortey and asked him to accompany him to his (accused's)

wife's place at Akrofu near Sokode and he agreed. According to him, they got to Akrofu at about 3:00pm and even passed the night with the wife of the accused known as Seyram Letsa. Testifying further, PW1 said that he and the accused went to Tsawenu near Sokode Gbogame the next day where the accused told him that he wanted to collect his gun from a blacksmith there. PW1 added that they did not meet the blacksmith in the house but the accused however forced the blacksmith's door open and took two single barreled guns from the room and bought a mat from the same town and wrapped the two guns with it. After that, they boarded their motorbike with the guns wrapped with the mat and left for Sokode Gbogame to visit one Godsway Dzumador. PW1 said that when they arrived at Godsway Dzumador's house, they met only Dziedzorm Adzakpa and his siblings in the house. PW1 disclosed that they kept the guns which had been wrapped with the mat in an uncompleted building belonging to Godsway Dzumador and the accused then picked a size 4 fertilizer sack from the same building and asked him (PW1) to follow him to the bush. According to PW1, they walked for about 15 minutes to a thick forest where accused pointed a skeleton on the ground to him and told him that he was the one who killed someone over there. According to him, the accused asked him to assist him pick the bones and some decayed dresses and a pair of sandals into the sack for him. PW1 said he obliged albeit he was afraid. He further disclosed that the accused finally picked the skull into the sack himself after making some incantations. They then left the bush with the bones in the sack and passed behind Godsway Dzumador's building. He added that they first hid the sack and its contents and went for their motorbike and the guns which they had wrapped with the mat before coming back to pick the sack containing the bones and thereafter, they left for Akatsi. Whiles on their way to Akatsi, PW1 said they passed through Tumor, a village near Ziope, to visit Mumuni Adabra, a fetish priest. According to PW1, Mumuni Adabra also saw the bones and the skull in the sack. He added that from Mumuni Adabra's place, they came to Akatsi where the accused dropped him off and gave him GHc20 to use as transport fare to board a vehicle home

and then warned him never to disclose that secret to anyone. The accused, according to PW1, then proceeded to Abor with the said bones and the guns.

PW2, Dzedzorm Adzakpa, a class 5 pupil of Sokode Primary School, also testified at the trial and said that he knows the accused and that the accused has been coming to his stepfather (Godsway Dzumador) at Sokode Gbogame. According to him, sometime in June 2020, the accused and Godfred Petetsi (PW1) came to their house at Sokode Gbogame on a motorbike but did not meet his parents at that time. PW1 recalled that the accused and Godfred Petetsi put something which had been wrapped with a mat in his stepfather (Godsway Dzumador)'s uncompleted building and thereafter, they entered the bush. However on their return, ostensibly from the bush, they passed behind the house so he could not see what they had packed in the sack. PW2 concluded by saying that the accused and Godfred Petetsi came for the motorbike and the items they had had wrapped with the mat and left.

PW3, Mumuni Adabra, happened to be the fetish priest living at Tumor near Ziope whose name featured prominently in the testimony of PW1. He also testified that he knows the accused and that the accused happened to be his friend. According to him, sometime in June 2020, the accused, in the company of Godfred Petetsi (PW1), visited him in his house one afternoon on a motorbike. He narrated that the accused and Godfred Petetsi carried two single barreled guns wrapped with a mat and a fertilizer sack. Ostensibly PW2, being somewhat inquisitive, upon seeing those items with the accused and Godfred Petetsi, wanted to know the contents of the sack so he opened it and saw human bones and a skull in it. He then asked the accused where he got the human bones from and the accused replied that he brought it from a bush at Sokode Gbogame. According to PW3, the accused confided in him that he was going to use the bones and the skull for something which he would inform him about later. PW3 then concluded his testimony by saying

that the accused fired a shot into the air and thereafter he and Godfred Petetsi took their items and left.

PW4, Francis Soku, also took his turn and testified at the trial and said that he knows the accused and that on 30 April 2020, his son Francis Sronney Soku (now deceased) left the house with his motorbike for work but did not return ever after. Consequently, he lodged an official complaint on 5 May 2020 with the Akatsi police and proceeded to give his statement in that regard. PW4 added that on 16 October 2020, the Akatsi police invited him after they had arrested the accused in connection with the complaint he (PW4) had lodged with the said police and the police had made him aware that the accused was the one who led his (PW4's) son Francis Sronney Soku from Abor through Akatsi and Ziope to Ho Sokode Gbogame as per their investigations.

PW5, Detective Inspector Japhet Prempeh, was a police officer stationed at the District Criminal Investigation Department at Akatsi. He also testified and said that he knows the accused and that on 5 May 2020, Francis Soku (PW4) reported at the Akatsi police station of his missing son (Francis Sronney Soku) together with his brand new motorbike on 30 April 2020. Following this report, PW5 said he used the deceased's contact numbers 0548745261 and 0592910915 and took an order from the District Court, Akatsi to MTN to provide police with the call details of the missing person. According to PW5, he received itemized bill from MTN indicating that on 30 April 2020, the missing person was at Abor and he had communicated with four MTN numbers which said communication the system had captured before moving through Akatsi and Ziope to Ho Sokode Gbogame. PW5 continued his testimony by saying that police took four MTN numbers the missing person communicated with at Abor to MTN pursuant to a court order and he received itemized bill from MTN indicating that the accused on contact number 0548929067 was the one who lured the missing person from Abor through Akatsi and Ziope to Ho Sokode-Gbogame. According to him, the system had captured the accused and the

missing person as having made phone calls and received messages respectively at exactly 11:12 a.m. on 30 April 2020. He added that the accused was lured on phone on 15 October 2020 by the Akatsi police to come and buy a “connection motorbike” and it was then that he was arrested with a foreign pistol on him. Testifying further, PW5 said that on 17 December 2020, the accused was cautioned but he denied knowledge of the missing person. However on 28 April 2021, the accused stated in his further statement that he knows the missing person and that he even prepared medicine for him and took GHc30 from him. According to PW5, investigations further disclosed that the accused was the one who lured the missing person from Abor to Sokode Gbogame on 30 April 2020 and robbed him of his motorbike and killed him as well. Therefore, on the advice of the office of the Attorney-General in Ho, the accused was cautioned on the offence of unlawful use of human parts and was consequently charged with the offence pursuant to the said advice and arraigned before this court.

I recall that during his testimony to the court, PW5 tendered in evidence a couple of documents in a bid to bolster the case of the prosecution against the accused, namely:

- (i) the itemized bill from MTN as Exhibit “A” series
- (ii) the various investigation caution statements obtained from the accused on 17 October 2020, 10 November 2021 and 28 April 2021 as Exhibits “B”, “D”, “F”, and “H” respectively.
- (iii) the various charge caution statements obtained from the accused on 17 October 2020, 17 December 2020 and 10 November 2021 as Exhibits “C”, “E” and “G” respectively.

I will endeavor to make copious references to and comment on all of these exhibits as and when the need arises.

EVALUATION OF THE PROSECUTION'S CASE

I recall that the accused subjected all the prosecution witnesses to cross-examination in a bid to discredit their individual testimonies and/or impugn their credibility and further bolster his stance that he did not commit the offence charged or at all. While evaluating the episodes that transpired during the cross-examination, I found that PW1 made a very interesting revelation that cannot pass without notice. He told the court that even though he could recollect that it was in the morning that the accused took the gun to Godsway Dzumador's house, he could not recollect the particular date and time it was. He also said under cross-examination the said bones that he accompanied the accused to go and collect were on the ground at the time they collected same and not that they were exhumed from the ground. When the accused asked him whether the said human bones and the guns were also carried on the same motorbike they had used that day to Akatsi, PW1 answered in the affirmative saying that it was the same motorbike they used. PW1 described the said motorbike as popularly known as Mapouka or Dubai and added that the accused placed the human bones between him (as the rider) and the steering wheel and the guns were placed between him (PW1) and the accused. PW1 took the stance that human bones could not just lie on the ground for no reason but when the accused asked him why he failed to disclose the incident to any other person when he witnessed same, PW1 said he did not disclose it to any other person because although he did not know how the bones came to lie on the ground, the accused warned him not to disclose it to anyone. However, when the accused asked PW1 how he (accused) was able to carry the bones and the guns to Abor after PW1 had alighted at Akatsi, PW1 answered that he would not be able to tell how the accused carried the said items to Abor. Even when the accused asked PW1 as to how long he (PW1) had known him, PW1 simply answered that he cannot tell because he had not computed it. Shockingly, PW1, from the records before the court, has lived with the accused before so how then could he say that he could not

tell how long he had known the accused? Could such a witness be believed? The record further shows that when the accused pushed him, PW1 disclosed that he stayed with the accused for two years prior to the completion of his education before he left to live with his parents except that he never joined the accused in any of his fetish practices during his stay with him. When the accused suggested to PW1 that all that he (PW1) had told the court in his testimony against him concerning the possession of human bones is not true, PW1 insisted that all that he has told the court are true because he is not the only person who witnessed that incident. This to my mind implies that apart from PW1, someone else or some other people also witnessed the incident.

I must also observe that from the testimony of PW1 under cross-examination, it is crystal clear that he testified as an eyewitness to the incident that led to the arrest and eventual prosecution of the accused in this court. So, as an eyewitness, I cannot treat his evidence lightly because whatever he had told the court ought to be examined in the light of the fact that he was someone who claims to have seen, observed or witnessed the accused in possession of the said human bones.

Even PW2 who claimed that the accused and Godfred Petetsi once came to his house sometime in June 2020 with two single barreled guns wrapped with a mat and a fertilizer sack could not tell the court the date on which the accused and the said Godfred Petetsi came to his said house when he was quizzed on that issue. Quite interestingly, PW2 even said that he could not remember the clothes which the accused was wearing on the said day on which the accused and Godfred Petetsi allegedly came to his house. Must such a witness be believed under the circumstances where the accused has flatly denied the charge? PW2 further alleged that when the accused and Godfred Petetsi came to the house, his (PW2's) parents were not around by then but the accused nonetheless went to PW2's father's uncompleted building and took a sack from there. However, he (PW2) did not inform his father on his return to the house that the accused and Godfred Petetsi had

earlier in the day come to the house in his absence. PW2 said that he was the only person present at the time the accused and Godfred Petetsi came and picked the said sack.

The accused suggested to PW2 that he was coached to come and testify against him because his father had also been arrested together with him (accused) concerning this matter and so the witness, PW2, was just suborned to testify in such a manner to exonerate his father but PW2 denied such an allegation. The accused did not leave the matter to rest there. He persisted in his pursuit to discredit the testimony of PW2 and thus ask PW2 how long it took between the time his (PW2's) father and he (accused) were arrested and the day they were brought to PW2's residence. Interestingly, PW2 said he could not tell. This answer triggered a follow-up question from the accused. The following is the said question and the response given by the PW2:

“Q: You are not able to mention the time we were arrested and the time we were brought to the house but you are able to recall the day we came to the house and picked the sack. Is that not so?”

A. Yes.”

This is quite a legitimate question for the accused to ask because one would wonder why PW2 could not reconcile the two scenarios put to him by the accused. By this, the accused was able to cast a dent of the credibility of PW2 and thus the court ought not take its focus from such an important clue in assessing the acceptability of the testimony of PW2.

On the part of PW3 he said under cross-examination that on the day the accused passed through his place with the sack containing human skull, the accused quickly tied the sack when he (PW3) saw the contents thereof and that the accused immediately directed Godfred Petetsi to get on the motorbike which he did and they sped off. The crux therefore of PW3's testimony is that he saw the human skull in the sack the accused was carrying that day. He simply witnessed *in flagrante delicto* the contents of the said sack

and was convinced that it was a human skull. However, because his village was quite far from the town, he could not report the issue to the police for the accused to be arrested explaining that his village was located at the outskirts of the town and that he was the only person living in that location at the time. PW3 also said that after he had seen the content of the said sack, the accused fired a shot which attracted the youth to the scene and that the shot was fired just when the accused had arrived and removed the sack from the motorbike. Can this kind of testimony be believed by any reasonably objective mind? In my candid view, this line of testimony is incredible in the sense that if the accused had indeed fired a shot as alleged by PW3 upon his arrival thereby attracting the youth to the scene and PW3 had observed the content of the sack the accused was carrying to be human skull, I do not think PW3 would have any difficulty having the accused apprehended at least by the said youth who allegedly thronged his place upon the firing of the gun by the accused. To make matters worse, PW3 stated that he did not know the route or direction the accused and Godfred Petetsi took when leaving so he could not report to the police because the police might not locate them after making the report and that might make the police think that he had made a false complaint to them. This piece of testimony sounds shocking to me because on PW3's own showing, the youth who thronged the place following the alleged gunshot questioned the accused as to why he had fired the gunshot and the accused answered that he was just testing a new gun he had acquired and that answer made the youth turn back. This sounds like a tale to me because if it were not so, I believe PW3 would have immediately hinted them about what he had seen in the sack the accused had brought to the place. Obviously, PW3 claimed that the accused came there that very day with Godfred Petetsi and that he knew Godfred's house but when quizzed in cross-examination as to why he did not get the accused arrested, he explained that when he questioned Godfred about the said sack, Godfred told him that he did not know where the accused had taken the sack to. Must that be enough justification for PW3 to let sleeping dogs lie? What is more startling to me

is the fact that PW3 disclosed that he made the said inquiry from Godfred the very moment that Godfred and the accused were with him at the house. This disclosure by PW3 buried the credibility of his testimony in a bottomless pit without any hope of redemption too great a confusion surrounded his testimony that the mind of the court was put in a state of soliloquy. Even the mind of the accused seemed to have been agitated by that testimony of PW3 so he sought to enquire about why having told the court that he knew the house of Godfred, PW3 did not report the matter to the police for Godfred to be arrested if indeed PW3 did not know where to find him (accused) in the hope that Godfred could direct the police to the house of the accused to be arrested also in connection with the case. PW3 fascinatingly responded that he only met Godfred at Todome some three months later and thereby reported the matter to the police who eventually arrested Godfred and took him to the Akatsi police. He added that at that time, he had heard that the accused was already in police custody at Akatsi. This piece of testimony by PW3 is clearly an afterthought judging from what he had earlier told the court on the issue.

With regards to PW4, I recall that he told the court that he has seen the accused with his (PW4's) son in his house on only one occasion but when the accused asked him about the location of the said house, PW4 gave quite a sarcastic answer by saying the accused himself knows where the house is located. I am at a complete loss as to why PW4 could not just simply tell the court where his said house he claims he saw the accused with son was located. This is because the accused had maintained quite resolutely that he did not know PW4 and that he had not even seen him (PW4) before. It is not lost on me that PW4 was called by the prosecution to testify and make the court believe that it was his son whom he claims he saw with the accused on only one occasion whose bones the accused was alleged to have been in possession of. Granted that it was indeed so, the question lingering on my mind is how sure was PW4 that the bones the accused was allegedly

found in possession of was the bones of his said son? Moreover, is PW4 under that impression simply because according to his testimony his son allegedly went out with the accused and never returned home from that day? On the day in question on which PW4 said he saw the accused and his son or even the month, he could not specifically tell but recounted that it was about 6:00 a.m. when the accused allegedly came to pick his son out. The record bears emphasis that the accused insisted that PW4 had never seen him before and that the only time PW4 ever saw him was at the police station and that if PW4 ever saw any person on that fateful day in his house with his son, then it could not be him. The record also bears emphasis that PW4 believed that his said son was dead because he had witnesses who told him the accused took some people to where the accused killed his son and collected his bones. This piece of testimony made me quite curious in the sense that if it is indeed true that the accused was found with human bones as alleged then first and foremost the bones must be established to be human bones and secondly, the bones of the son of PW4 who is said to have died because the accused allegedly killed him. This is because PW4 himself said that he did not see the alleged bones except that he has witnesses who told him about same. The question is where are the said bones?

PW5, the investigator in charge of the case, also made some interesting revelations while under cross-examination. For example, he said that he procured an itemized bill from the MTN office indicating that the accused had a communication with the missing person. He was however not giving the recording of the voice call between the missing person and the accused. How then can one ascertain the content of the conversation which the accused and the missing person had? That notwithstanding, PW5 indicated to the court that the call details of the accused and that of the missing person alone is sufficient evidence for one to believe that they were working together ostensibly on the day in question. This is quite fallacious! What the prosecution was required to prove to secure

conviction on the charge preferred against the accused is not that the accused and the missing person worked together on the day the missing person got missing but rather that the accused was found in possession of some bones which were not necessarily the bones of the missing person per se but those of a human being. So, how can the call details of the accused and that of the missing person be sufficient evidence for the prosecution to prove the charge against the accused that he was found in possession of human bones contrary to law? The record of evidence is replete with the fact that on PW5's own showing to the court, the accused was taken to his house on the day he was arrested for a search to be conducted on him. According to PW5, the purpose of that search was to look for the missing person and his motorbike but they found neither the missing person nor the motor bike at the house of the accused. PW5 also made the court aware that upon the arrest of the accused, they took him to the very location where they were told the accused had taken or collected the human bones from but they could not retrieve anything from the scene because the place had been developed at the time they went there. He explained that they went to the said scene some three months after they had received information on the alleged crime. By saying that the place had developed at the time they went there, PW5 meant that about two or three people had put up houses there. The record also shows quite clearly that PW5 had earlier arrested about four people in connection with the case when he got to know that the said four people had gone to Dzodze Kpelikope with the missing person to attend a wedding ceremony early in the morning of the day the missing person is said to have gotten missing and that the said four people had returned that same day with the missing person before 7:00 a.m. PW5 said that his investigations revealed that it was immediately they returned from Dzodze that the missing person went to the place where the accused lived and called him on phone at about 8:00 a.m. on 30 April 2020.

The offence preferred against the accused is unlawful use of human parts contrary to section 69(B)(b) of the Criminal Offences Act, 1960 (Act 29) as amended by the Criminal Offences (Amendment) Act, 2012 (Act 849). I have already stated the provision of the said law much earlier in this judgment. The elements of the said offence which the prosecution is required to prove are as follows:

- i. That the accused was in possession of human parts; and*
- ii. That the accused had no lawful authority to possess the said human parts.*

From the above stated elements of the offence charged, it bears mention that once the accused is proved to have been in possession of human parts and he shows to have lawful authority permitting him to be in possession of the said items, then he cannot be in conflict with the law to warrant his conviction. In that case, he cannot be said to have committed any offence. It is only when the accused is proved to have been in possession of human parts and he is unable to show to the court the lawful authority he had permitting him to be in possession of such items that the law would warrant his conviction and eventual sentence. This is a simple charge that I think the prosecution should not have any difficulty establishing same at the trial to the satisfaction of the court.

I recall that the prosecution through PW5 tendered a couple of investigation and charge caution statements in evidence, marked as Exhibits "B" to "H". Exhibit "B" was obtained from the accused on 17 October 2020 when he was being investigated for the offence of kidnapping ostensibly following the missing of Francis Srony Soku. In that statement Exhibit "B", the accused stated that he knows nothing regarding the whereabouts of the missing person. Exhibit "C" was also obtained from the accused on the same 17 October 2020. It was a charge caution statement in which the accused simply relied on his investigation caution statement given that same day (Exhibit "B"). Exhibit "D" was a further statement obtained from the accused on 17 December 2020 but it was obtained on a charge of murder in respect of which the accused was being investigated. The accused

denied picking any human bones as alleged in that statement (Exhibit “D”). Exhibit “E” was also obtained from the accused on the same 17 December 2020. It was a charge caution statement in which the accused simply relied on the statement he made in Exhibit “D”. Exhibit “H” was a further statement obtained from the accused on 28 April 2021 as an investigation caution statement on the offence of robbery/murder. Honestly, I cannot appreciate how these Exhibits “B”, “C”, “D”, “E” and “H” relate to this case. They were not taken from the accused on the charge he is facing in this case. I therefore find them to be superfluous as far as this case is concerned. With the obtention of all these statements from the accused, I ask myself what was the police up to? Were they just doing what is known in our local parlance as “trial and error” following the missing of Francis Srone? This is obviously a question for the gods! But in my view, it is only Exhibits “F” and “G” which relate to this case and therefore worth considering.

Whereas Exhibit “F” dated 10 November 2021 is an investigation caution statement obtained from the accused on the charge of unlawful possession of human parts, Exhibit “G” dated the same day was a charge caution statement obtained from the accused on that same offence. In Exhibit “F”, the accused simply stated that he had nothing to say and that he would make a statement when brought to court. He relied on that same statement in Exhibit “G”. This means that technically the accused did not give any statement on the charge he is facing in this case. It was in his own right to have elected not to give any statement to the police in the manner he did since by law, an accused reserves the right not to incriminate himself. It is for the prosecution to prove that he indeed committed the charge he is accused of.

I have given anxious consideration to the case of the prosecution in its entirety and I wish to observe that the case of the prosecution left the mind of the court in a state of soliloquy as to the guilt of the accused following some doubts that existed in the case of the prosecution some of which I have already mentioned earlier in this delivery. For the sake

of accentuation, I reiterate that the prosecution could not convince the court that indeed the accused was in possession of human bones. The prosecution further failed to satisfy the court (granted that the accused was indeed in possession of any human bones at all) that the said bones had been forensically tested and proven to be human bones. This is what left the mind of the court in that state of soliloquy. I recall in the case of *Akilu v. The Republic (2017-2018) 1 SCLRG 444* the emphasis which the Supreme Court laid on the principle in criminal trials that all reasonable doubts that make the mind of the court uncertain about the guilt of the accused are always resolved in favour of the accused. This is what the Supreme Court speaking through Appau, JSC had to say at page 453 of the report:

“We want to lay emphasis on the principle in criminal trials that; all reasonable doubts that make the mind of the court uncertain about the guilt of the accused are always resolved in favour of the accused. By reasonable doubt is not meant mere shadow of doubt. Where, from the totality of the evidence before a trial court, a soliloquy of; ‘should I convict’, or ‘should I acquit’ takes control of the mind of the court, then a reasonable doubt has been raised about the guilt of the accused. The appropriate thing to do, in such a situation, is to acquit, as required by law.”

See also the case of *Dexter Johnson v. The Republic (2011) 2 SCGLR 601* in which Dotse, JSC remarked at page 663 as follows:

“Our system of criminal justice is predicated on the principle of the prosecution, proving the facts in issue against an accused person beyond all reasonable doubt. This has been held in several cases to mean that, whenever any doubts exist in the

mind of the court which has the potential to result in a substantial miscarriage of justice, those doubts must be resolved in favour of the accused person.”

It is my thinking that based on the foregoing if the court had adverted its mind to the case of the prosecution well, it would not have called upon the accused to open his case under the circumstances. This is because where the accused or defence is wrongly called upon, the prosecution cannot rely on the defence to fill in the gaps in their case. In *Logan & Laverick v. The Republic [2007-2008] SCGLR 76*, it was held that where the defence is wrongly called upon, the fact that the accused gives incriminating evidence filling the omissions for the prosecution will not change the legal position especially where no offence has been alleged or proved by the prosecution.

That notwithstanding, the accused gave his defence to the court in three sittings on 15 August 2022, 29 November 2022 and 21 December 2022 covering his oral testimony in-chief and his testimony under cross-examination. In fact, the defence he put up by the accused was at least reasonably probable to warrant that he be left off the hook. I do not intend to recount any portion of the defence the accused put up at the trial in this judgment for the simple reasons I have already articulated. I think that recounting the testimony of the accused would be a sheer waste of judicial time in the light of the *Logan & Laverick v. The Republic* case cited supra.

DECISION OF THE COURT

Putting all these considerations together, I think the accused deserves to be, and is hereby, acquitted and discharged of the offence of unlawful use of human parts contrary to section 69(B)(b) of the Criminal Offences Act as amended. I so order.

(SGD) H/H FELIX DATSOMOR

CIRCUIT COURT JUDGE

20/02/2023

REPRESENTATION:

ETSE SENYO AXAME, ASSISTANT STATE ATTORNEY, APPEARS FOR PROSECUTION

ACCUSED APPEARS IN PERSON