

IN THE CIRCUIT COURT HELD AT CAPE COAST ON TUESDAY THE 17<sup>TH</sup> DAY  
OF MAY, 2023 BEFORE HER HONOUR VERONIQUE PRABA TETTEH (MRS.),  
CIRCUIT JUDGE

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198/2022

THE REPUBLIC  
VRS  
KWAME OWUSUMAH

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*ROLAND A. K. HAMILTON ESQ.*

*LUCY BOISON ESQ.*

### JUDGMENT

The case against the accused person is for unlawful occupation of public land contrary to section 236(4) of the Land Act, 2020, Act 1036. The said section 236(4) states:

*a person who, without reasonable excuse, the proof of which lies on that person, occupies or in any manner encroaches on or interferes with public land commits an offence and is liable on summary conviction to a fine of not less than one thousand penalty units and not more than two thousand penalty units or to a term of imprisonment of not less than one year and not more than three years or to both.*

The offence spelt out above is not one of strict liability where the occupation or interference with public land, once proven, is enough to find him guilty. Prosecution must also establish that, no reasonable excuse exists for the occupation. Thus, reasonable excuse is a defence under the law as well as a matter of proof and the burden of persuasion lies on the person charged to satisfy the court of his reasonable excuse.

It is important to set out the burden of persuasion the two parties in this case bear, as this case is a unique case where a burden is placed on the accused person. To start with, the burden of proving the evidence of the crime committed by the accused person lies unequivocally on the prosecution. This is a matter of law set out in section 15(1) of the Evidence Act, 1975, NRCD 323. This burden requires prosecution to produce such quality evidence that will convince the court of the guilt of the accused beyond reasonable doubt. See section 11(2) and 13(1) of NRCD 323

*11(2) In a criminal action, the burden of producing evidence, when it is on the prosecution as to a fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on the totality of the evidence a reasonable mind could find the existence of the fact beyond a reasonable doubt.*

*13(1) In a civil or criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt.*

Once the evidence provided falls short of belief beyond reasonable doubt, an accused person must be acquitted at the end of the case.

See the cases of *Yeboah v The Republic* [1972]2 GLR 281

***Frimpong alias Iboman v Republic* [2012] 1 SCGLR 297**

*Banousin v Republic* (J3/2/2014) [2014] GHASC 10 (18 March 2014). The Supreme Court in this case explained that:

*“What “beyond a reasonable doubt” means is that, the prosecution must overcome all reasonable inferences favouring innocence of the accused. Discharging this burden is a serious business and should not be taken lightly. The doubts that must be resolved in favour of the accused must be based on the evidence, in other words, the prosecution*

*should not be called upon to disprove all imaginary explanations that established the innocence of the accused."*

On the other hand where the burden shifts to the accused person to lead evidence he is only required under section 11(3) of the Evidence Act NRCD 323 to produce sufficient evidence that will raise reasonable doubt in the case made by prosecution. In the instant case, reasonable doubt will be in the form of providing evidence of his reasonable excuse for being on the land. See the case of COP vrs Antwi [1961] GLR 408

I will proceed to consider the issues before me. The particulars of offence states that:

Kwame Owusumah, 59 years, Assistant Technician:- For that you sometime in March 2021 at Abura near the new Cape Coast Sports Stadium in the Central Region and within the jurisdiction of this court did encroach on public land belonging to the university of Cape Coast by carrying out building and construction works on the land.

The two main issues are

- a. whether the land occupied by the accused is public land. if the answer is yes then,
- b. whether the accused person has a reasonable excuse to occupy the land

### **Public Land**

The prosecution tendered through its second witness, the Executive Instrument of 1972 in respect of University of Cape Coast and Certificate of Allocation and its transcripts dated 6<sup>th</sup> July, 1987. On the 22<sup>nd</sup> July, 2022 when these two exhibits were tendered they were labeled as Exhibit B and C and C1 respectively. This was in error as there already existed exhibits on record bearing those labels. They are thus relabeled as follows:

E. 1. 13 - Exhibit D

Certificate of Allocation – Exhibit E

Transcript of Certificate of Allocation - Exhibit E1

Chapter 21 of the 1992 constitution is dedicated to provisions on lands and natural resources in Ghana. In Article 257(2), public lands are stated to include

...any lands which, immediately before the coming into force of this Constitution, were vested in the Government of Ghana on behalf of, and in trust for the people of Ghana for the public service of Ghana, and any other land acquired in the public interest, for the purposes of the government of Ghana before or after that date.

Two categories of lands are referred to in the provision. Lands vested in the government of Ghana for the public service of Ghana and lands acquired in the public interest for the purposes of government. I believe the Cape Coast University land is land that falls within the second part of Article 257(2); that is, land acquired in the public interest for the purposes of Ghana.

On the 7<sup>th</sup> day of March 1972, the National Redemption Council, the government at the time in Ghana, passed the State Lands (Cape Coast- Site for University College) Instrument, Exhibit D declaring the acquisition of an area of 6.22 square miles situate at Cape Coast for the purpose of the public interest. Paragraph 1 and 2 of the instruments states the following:

*Whereas it appears to the National Redemption Council that the land specified in the Schedule to this Instrument is land required for public interest*

*Now, Therefore, in exercise of the powers conferred on the National Redemption Council by subsection (1) of section 1 of the State Lands Act, 1962 (Act 25), this instrument is made this 7<sup>th</sup> day of March 1972*

It is clear from reading the above declaration, and considering the provisions of Article 257(2) that all lands falling within the description of lands in the schedule to E.I. 13 are public lands. Being satisfied that University of Cape Coast lands are public lands; the prosecution has to satisfy this court beyond reasonable doubt that the portion of land occupied by the accused person forms part of the said public lands.

In proof of its case, the prosecution called 2 witnesses; the police investigator and an officer from the university's estate department. According to the investigator, the university lodged a complaint of the accused's unlawful occupation of its land on the 7<sup>th</sup> of April 2021.

After the report was made, he visited the land and saw that the accused had buildings on 3 plots of land. The accused was asked to produce his documents and when he did so; a search was conducted with it at the Cape Coast Lands Commission. The search conducted at the Lands Commission with the accused person's site plan, revealed that his land fell within the University's Lands. This document was labeled Exhibit C.

The results of the Exhibit C stated that:

**The whole site falls within a State Land acquired by the Government of Ghana under Executive Instrument (E.I.) No. 101/72 dated for University College at Cape Coast.**

Attached to the search report is the site plan for the accused's land. What is the probative value of this search report as concerns the prosecution's case? In the civil case of Registered Trustees of The Catholic Church of Achimota vrs Buildaf Ltd and others (j430 of 2014) [2015] GHASC 124 (25 June 2015) Benin JSC held:

*"A search report is indicative of the status of the land in question as the lands department has it at the date of the search, but its credibility can be impugned in judicial proceedings so when*

*it succeeds the court will be at liberty to reject it. That is how the court's treatment of the search reports should be understood."*

It means that while the search report did not provide conclusive proof of ownership, it is evidence of the status of the land in question as per the records held by the lands commission. So as at today, unless there are contrary records or reasons proffered to convince the court of the lack of credibility in Exhibit C, Exhibit C will have to be taken at face value to show that the University's land as particularly described in Exhibit D is registered at the Lands Commission and that the accused's land represented in his site plan forms part of the University's land acquired in 1972 for the university.

The investigator also tendered photos of the accused house. In one of the pictures is a pillar within the compound of accused's house. This pillar marks the boundary of the university's land. On this concrete pillar is written the alphabets, UCC. When cross examining the prosecution's second witness, counsel stated that the pillar was only placed after the accused had put up his house but this was denied by the witness and he indicated that the pillar was boundary pillars originally placed on the land, before accused's occupation. Counsel's version would mean that officials from the University entered the home of the accused and placed the pillars there. If that were the case, I am certain that the accused would have led cogent evidence to prove same. This matter was not referred to at all by the accused who chose to testify during the trial and I do not find Counsel's version to be the truth.

Both prosecution witnesses were thoroughly examined by the accused's counsel and in my opinion, no significant challenge was posed as to the value of their evidence. The cross examination established that the accused is in current possession of the land and has three buildings on it. The witnesses also admitted that the university had entered into tenancy agreement with the accused where rooms had been rented out to members of staff of the university.

Counsel for accused in his address argued that prosecution failed to tender a site plan belonging to the university and a composite plan showing the superimposition of the accused's site plan on the land and that this failure is proof that the accused was not in occupation of the complainant's land. I hold the contrary opinion and I find that E.I. and the certificate of allocation, Exhibit E1, establishes the university's claim to the lands declared therein. As the E.I.13 had been registered with the Lands Commission and the certificate of allocation issued, it is sufficient proof of the university's acquisition. Also important is the evidence that buildings around the accused persons land are buildings belonging to the university. I find that the accused's land and the buildings there form part of public land belonging to the university.

### **Reasonable Excuse**

The next issue is whether the accused is criminally liable for his occupation of the land in dispute, in other words if he has a reasonable excuse for occupying the land. The accused's defense is on two main grounds; the first of which is the legal argument that, the effect of the charge against the accused under Act 1036 is to apply the law retroactively. Counsel for the accused argued in his address that the 1992 constitution is very protective of the rights of Ghanaian citizens and makes it clear that citizens cannot be tried for crimes which did not exist at a time they committed a certain act. He refers to Articles 19(5) and 107 of the constitution and argues that since the act claimed to have been committed by accused; which is his occupation of the land was done over 20 years ago, the accused cannot be prosecuted for that offence. Prosecution in response argued that the accused's actions which are criminal are not a one of action, but a continuous one which persists at the time of the passing of the Land Act and therefore there is no retroactive application of the law. She also claims that as at March 2021 the accused was

still carrying out construction on a portion of the land and thus the charge is not brought retrospectively. Articles 19(5) and 107 provide as follows:

*Article 19(5) a person shall not be charged with or held to be guilty of a criminal offence which is founded on an act or omission that did not at the time it took place constitute an offence.*

*Article 107 Parliament shall have no power to pass any law*

*(a) To alter the decision or judgment of any court as between the parties subject to that decision or judgment or*

*(b) Which operates retrospectively to impose any limitations on or to adversely affect the personal rights and liberties of any person or to impose a burden, obligation or liability on any person except in the case of a law enacted under articles 178 t 182 of this constitution.*

The accused's occupation of the land far predates March 2021 which is the date prosecution indicated in its particulars of offence. In my opinion, his continuous occupation of the land brings him within the ambit of section 236(4). If the argument were that sometime in 1996, the accused's occupied a portion of the land but had vacated same, it would be considered an act that took place before the passing of Act 1036. That is not the case from the evidence. The accused claims he took possession of the land and his occupation has been continuous from that time till now.

It is his continuous occupation of the land, after the passing of Act 1036, that is key in determining his criminal liability and not his acquisition of the land in 1996. The case of prosecution also seems to refer to his actions of continuing construction after the passage of Act 1036 as the particulars of offence refers to him "carrying out building and construction works on the land" as at March 2021. In my opinion, it is his



occupation and activities on all three plots that is in issue dispute and not per se his activities on one side or one building and his occupation is continuous and therefore the action against him is not applying Act 1036 retroactively.

The second leg of accused's defense is his belief in his lawful purchase of the land over 20 years ago. Both the accused and his witness testified that the land was acquired from the Anona family of Akotokyir. He acquired the land and entered same in 1996 but the indenture was executed in 1999. He tendered his indenture from his grantors which shows that he acquired the land from the Anona family of Akotokyir dated 7<sup>th</sup> November 1999. After the purchase, he put up a structure which is currently walled and has resided in it since then. He also put up some buildings which he let residentially and at some point the university rented portions of the property for its staff. As proof, the accused tendered the tenancy agreement between him and the university; a photocopy of a cheque paid to him by the university and a letter from the university to him on the matter of the tenancy. During his cross examination, the accused testified that the family had informed him that the university had returned their land to them which is why he purchased it. He also admitted that before purchasing the land, he had been unable to perform a search at the lands commission. His cross examination revealed that an attempt had been made by the university to warn him of his occupation of their land. He claims that, the then vice chancellor of the university after inspecting his documents did not raise the issue again and he believed that he was in lawful occupation.

The representative of the accused's grantor family also testified that the land belonged to his family and not the university. When he was cross examined, he denied knowledge of the acquisition by government of the land for the university. I did not find this evidence particularly helpful. Also the witness could not provide evidence of distinction between the accused's land and that of the university.

The question to be answered is whether this defense of the accused is reasonable excuse within the meaning of Section 236(4). The offence is not strict liability whereby the mere presence of the accused is enough to find him guilty of the offence. Rather, the act says where there is reasonable excuse for the occupation, the accused may not be found guilty. The Act does not spell out what is meant by reasonable excuse. Reasonability here would therefore refer to what an ordinary man believed to be true. In this case, prosecution alleges that the accused was warned not to carry his construction on the land by officers of the university. No evidence of this fact was established beyond the accused's admissions of his interactions with the vice chancellor. The accused persons' exhibits, that is, the tenancy agreement, issued cheque and letter from the estate manager all dated sometime in 2009 show that for a period, this same university had led accused to believe in his lawful occupation of the land. This shows a level of complicity on the university's part for the accused's continuous occupation of the land until March 2021.

Consequently, even though I am satisfied and find that prosecution has established that the accused in occupation of public land belonging to the University of Cape Coast, I find that accused's excuse for being on the land is reasonable based on the actions of the university and find him not guilty. He is acquitted and discharged.

**SGD**

**H/H VERONIQUE PRABA TETTEH (MRS)**  
**(CIRCUIT JUDGE)**