

IN THE CIRCUIT COURT HELD AT YENDI ON FRIDAY 28<sup>TH</sup> APRIL 2023,  
BEFORE HIS HONOUR ANTHONY ADUKU-AIDOO ESQ, CIRCUIT COURT  
JUDGE.

COURT CASE No. CT/23/2023

REPUBLIC

VRS

ABUKARI TOFIK @ HAKEEM TAHIDO

## J U D G E M E N T

### Introduction

The accused person was charged with one count of unlawful entry, contrary to section 152 of the Criminal and Other Offences Act, Act 29, 1960 (as amended). The accused person pleaded not guilty to the charge and the case proceeded to trial. This is the judgement of this trial court.

### Facts of case

The facts of the case as presented by prosecution to this court are that the complainant, Abugri Paul Atanga-Bono is a nurse residing at Sikafuo, a suburb at Yendi. The accused person is a motor mechanic residing at Balogu, Yendi. On 20<sup>th</sup> February, 2023, the complainant whilst at home around 1.20pm, over heard some noise in his compound and decided to see where the noise was coming from. When complainant came out of his room, he saw accused person standing in his compound and when he questioned him as to what he needed, he replied and told the complainant that he was being chased by two policemen, after the motor bike on which he was a pillion rider got involved in an accident. Accused person said he jumped the wall of the house and came to the yard in order to hide himself from the police. Complainant not satisfied with the explanation later reported the case to the police leading to the arrest of the accused person. During investigations, accused person could not lead the police to his

friend, Rafik whom he said was riding at the time of the accident and also could not identify the two policemen he alleged to have chased him. After investigations, the accused person is charged with the stated offence and arraigned before this court for trial.

### **Burden of Proof**

Section 11(2) of the Evidence Act, NRCD 323, 1975, and as posited in the Supreme Court case of Fuseini v. Rep. (J4/32/2014) [2018] GHASC 28 (09 May, 2018), that the prosecution bears the burden of proving the guilt of the accused beyond reasonable doubt. And in accordance with the current practice directive, after the prosecution has done full disclosure and served the witness statements on the accused, it called only two witnesses in its bid to prove the guilt of the accused to discharge its burden of proof.

### **The Prosecution's Case**

PW1, Abugri Paul Atangabono, resident of Sikafuo in Yendi gave testimony to the effect that on 20<sup>th</sup> February, 2023, at about 12.15pm the accused person scaled the witness' fence wall into his house. The witness confronted the accused person and he told the witness that he was being chased by the police as a result of a friend knocking down a girl with his motor bike. The accused person was a pillion rider according to him. The witness did not believe what the accused person told him and he made a complaint at the police station for the accused person to be arrested. With that the witness ended his testimony.

PW2, the investigator, No. 57733 G/Const. Ishmael Donkoh was the next and the last witness the prosecution called in aid of its case. He testified that on 20<sup>th</sup> February, 2023, at about 1.40pm a case of unlawful entry was reported and referred to him for investigations. Not much of evidence of probative value was given by this witness except to tender the statutory statements that came to him in his usual mundane exercise of investigations. With that the prosecution closed its case.

*Whether or not the prosecution has established a prima facie case*

At the end of the case for the Prosecution, in accordance with section 173 of the Criminal Procedure Act, Act 30, (1960), it is incumbent on this court to find out whether, upon the evidence adduced by the prosecution against the accused, a prima facie case has been established to warrant the accused to proffer an answer.

On record, at the close of the case of the prosecution, there is evidence that the accused person did enter the house of the complainant. As to whether the said entry on the day in question was lawful or otherwise, would depend on the evidence the accused person may put before this court. The accused, was therefore offered the opportunity to state his side of the case in defence.

*The case for the Accused*

In entering his defence, the accused person gave evidence himself. The evidence of the accused was that, on the day in question, he entered the complainant's house by jumping over the wall of the house. The complainant upon seeing him asked what he wanted. The accused person told the complainant that he was being chased by the police after hitting someone with his motor bike. According to the accused person, the complainant did not believe what he was told and shouted "thief, thief, thief" after which he reported the matter to the police for the accused person's arrest. That was the testimony of the accused person.

The accused person intimated to this court to have call one other witness to testify on his behalf. This court granted him three adjournments but he failed or refused each time to call the said witness. This court had no option other than to close his case in defence and adjourn for judgement. And so did the accused person end his case in his defence.

### *The guilt of the Accused*

The accused is charged with one count of unlawful entry, contrary to *section 152 of the Criminal and other Offences Act, Act 29, 1960, as amended*. To this charge he pleaded not guilty, hence this trial.

*Section 152 of the Criminal and other offences Act, 1960, Act 29, as amended* states:

#### **Section 152—Unlawful Entry.**

Whoever unlawfully enters any building with the intention of committing crime therein shall be guilty of second-degree felony.

The offence is explained in *section 153* of the same Act thus:

#### **Section 153—Explanation as to Unlawful Entry.**

A person unlawfully enters a building if he enters otherwise than in his own right or by the consent of some other person able to give such consent for the purposes for which he enters.

Evidence on record, indicates that the accused person entered the compound of the complainant's house. The accused does not deny this fact. However, his defence was that, he was being chased by the police after knocking down a girl with his motor bike. So, he entered the house by jumping over the fence wall of the house to hide himself from the police. Per *section 153 of Act 29* quoted above, the entry of the accused person into the house of the complainant is clearly without the complainant's consent and therefore, unlawful. The accused person also entered the house not in his own right of entry. But is the said unlawful entry by the accused person laced with the intention to commit crime, since he was not found to have committed any crime upon his entry into the house. Perhaps, the answer to such a question lies in the conduct of the accused person so far.

On record, the accused person refused or failed to lead the police to the scene of the said accident from which he claimed he was running. And so, the veracity or otherwise of his claim could not be ascertained by the police or any other person. He also, could not lead the police to the said friend he called Rafik, whom he had the

accident with on that day. And to buttress that the accused person was given several adjournments in court to have called this witness of his to testify in support of his case in defence, but he refused or failed to call the said Rafik.

But more importantly, the accused person's evidence is thwart with many inconsistent statements that is of major concern to this court. Firstly, he stated in his evidence in chief that when he was arrested, he was not given opportunity to make any statement until he was brought to this court for trial. Yet, on record there is a copy of his statement on caution to the police, marked Exhibit C, filed as part of the disclosures from the prosecution and served on the accused person. So, it cannot be true that he was not given the opportunity to talk while he was in the custody of the police.

Secondly, the accused person in his evidence in chief testified that he was riding the motor bike when they allegedly hit the girl in the street. But, Exhibit C, his caution statement indicates that he told the police that he was the pillion rider at the time of the alleged incident. Or is it that, on oath, he wanted his story to be more believable or palatable to this court.

In the case of REPUBLIC v. MAIKANKAN AND OTHERS [1972] 2 GLR 502-514 Aboagye J, (as he was then), said in an obiter that:

“Once it has been proved that a witness has made previous statements to the police, the contents of which are inconsistent with the evidence given in court by the same witness, the effect of the evidence is negligible. “

Again, in the case of STATE v. OTCHERE AND OTHERS [1963] 2 GLR 463-531, the court held in holding 14 thus:

“A witness whose evidence on oath is contradictory of a previous statement made by him whether sworn or unsworn is not worthy of credit and his evidence cannot therefore be regarded as being of any importance in the light of his previous contradictory statement unless he is able to give a reasonable explanation for the contradictions.”

In the light of the above, this court would not put much premium on the evidence of the accused person in his defence. This court is of the mind that the accused person

only fabricated the story as a charade to cover his criminal intention in his unlawful entry into the house of the complainant. I therefore, find as a fact that the accused person's unlawful entry into the house of the complainant was with criminal intent to commit crime but he was found out. I find him guilty of the offence of unlawful entry as charged and convict him accordingly on that sole count.

### **Mitigation Plea**

Prosecution pleads in mitigation that the accused person is a young offender who ought to be given another opportunity with a lenient sentence. The accused person also prays for forgiveness and has promised not to repeat such a thing again in his lifetime.

### **Sentence**

Having heard from both the prosecution and the accused person on their respective mitigation pleas. I have also taken cognisance of the fact that the accused person has been in custody for the past three months, since the inception of this case in February, 2023. Accordingly, I sentence the accused person to a fine of 20 penalty units for the sole charge. In default the accused person shall serve one (1) week prison sentence.

(SGD)

H/H ANTHONY ADUKU-AIDOO ESQ.

(CIRCUIT COURT JUDGE)