

IN THE CIRCUIT COURT '10 OF GHANA, ACCRA, HELD THIS THURSDAY THE 13<sup>TH</sup> DAY OF OCTOBER, 2023 BEFORE HER HONOUR EVELYN E. ASAMOAH (MRS)

CASE NO.

D21/246/2022

THE REPUBLIC

VRS

SAMUEL HAGAN

CHIEF INSPR. BENSON BENNEH FOR THE REPUBLIC

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## JUDGMENT

- The accused was charged with the offence of unlawful possession or control of narcotic drugs without authority contrary to section 37(1) of the Narcotic Control Commission Act, 2020- Act 1019. He pleaded not guilty to the charge. The prosecution bore the legal burden to prove its case beyond reasonable doubt.

In the case of **Francis Yirenkyi V. The Republic Supreme Court Criminal Appeal No. J3/ 7/ 2015 17th February 2016** Justice Dotse JSC stated:

*“In his book, entitled “The Supremes Greatest Hits – The 34 Supreme Court Cases That Most Directly Affect Your Life” Michael G. Trachtman, commenced chapter 4 of the book on page 58 with the following quotation*

*which we think is very relevant to the circumstances of this case that we would want to adapt and use. It states as follows: - "The one place where a man ought to get a square deal is in a courtroom, be he any colour of the rainbow..." Atticus Finch..."*

●The facts presented by the prosecution are as follows: The complainants are police officers stationed at Mamprobi. On 4th February 2022 at about 6:00 pm, the Mamprobi Police command embarked on an operation to arrest suspected drug peddlers and users within its jurisdiction. The team acting on a tip-off went to a ghetto at Dansoman beach where undercover men were placed among the people present. Whilst there, the accused was spotted with a multi-colored polythene bag containing wrappers of dry plant materials suspected to be narcotic drugs, which he was selling out. The team was called in and the accused was arrested with 42 wrappers of dry plant materials suspected to be narcotic drugs. The accused, together with the exhibits, was taken to the station for investigation. The accused claimed ownership of the 42 dry plant materials and admitted that he has been selling them. A caution statement was obtained from the accused and the exhibit was forwarded to the Police Forensic Science Laboratory for examination.

- The first prosecution witness- a police officer testified that: On Friday, 4th February 2022 at about 4:45 pm, the district police commander and the Mamprobi police team embarked on operational duty. The team went to Dansoman beach road. He was in civilian clothes and was directed to go to the 'weed base' at the seashore for surveillance work. Whilst at the base, he wanted to know the person who sells the weed so he asked one of the smokers at the scene who pointed to the accused- the one in a white shirt sitting in the middle of two other guys- on a plastic chair. He then sat on one of the rocks at the base, observing the activities of the accused. It was there that he saw people buying plant materials from the accused. One of the policemen also in mufti came to the scene. The accused then became suspicious because the faces were not familiar to him. He stood up and headed towards the exit but he was already surrounded and subsequently arrested with the plant materials. The accused was then taken to the police station for further investigations. According to the investigator, the police team made up of the District Commander, 9 other rank officers, and 4 community protection assistants arrested and brought to the station the accused and 7 other people. That the accused had 44 wrappers of plant materials.

The court, after the case of the prosecution, ruled that a prima facie case had been established and called on the accused to open his defence.

In the case of **Philip Assibit Akpeena V. The Republic** - Court of Appeal- Suit Number H2/23/2018 dated 13th February 2020, Justice Adjei JA - stated:

*“Where the prosecution proves its case beyond reasonable doubt, and the Appellant puts up a defence, an appellate court is required to examine the defence as to whether it is acceptable, if it is not acceptable, the court shall proceed to ascertain if it is reasonably probable and where it is not the court must further examine the entire defence put up by the accused and satisfies itself that if it is matched against the case of the prosecution it is clear that the guilt of the accused has been proved beyond reasonable doubt. The above position of law has been decided in cases including Lutterodt v Commissioner of Police [1963] 2 GLR 429 and Bediako v Republic [2010-2012] 1 GLR 566...”*

- The accused in his testimony stated: - One Sunday, he went to the beach and sat on the sea defence when a guy called him, saying that someone was looking for him. He did not know that the person was coming toward him. He asked for the person who sells ‘wee’ so he directed him to another person he could get

some. That the guy who was selling the substance quickly came to him and informed him that the person who came to him earlier is a police officer. He did not see the man again until 4th February 2022. He went to the beach with his friends after he took his wife to the hospital. They took three plastic chairs and sat by the sea defence. That the man who had previously come to ask for the wee seller came to the scene with another man. One approached him and again asked of the wee seller. He informed him that he does not sell that stuff. That his friends left the scene.

He also decided to leave but upon reaching the street, he saw the Police pick-up vehicle packed ahead of him and police officers standing by it. They came and arrested him and took him back to the sea defence. He saw two guys behind him with a polythene bag which they gave to the Commander. He denied ownership of the polythene bag. He realized that some other persons were arrested and they were taken to the Mamprobi police station. He indicated that he does not sell 'wee'.

- 'Wee' Business –Contrary to this evidence, the accused in his caution statement indicated that he has no job so he sells wee. In Exhibit A, he stated:

“I am a petty trader but business is not good as such I lost my job about six months ago. I have no job to do as such decided to sell wee. I have been selling the wee for the past six months. I get the wee from Konkomba market. Yesterday 4th February 2022 at about 6:00 pm, I went to Konkomba market and bought three parcels of wee valued 20 cedis each. I do not know the name of the supplier at Konkomba. It is an open market where sellers ask about your mission and when you tell them, that you want wee to buy then they would sell it to you. I do not have a specific person that I buy the wee from. I took the wee to the seashore at Dansoman beach road where I wrapped them into small quantities which I sell for one Ghana cedi.

On 4th February at about 4: 00 pm, I went to a drinking spot called 24 hours where I sat on a white plastic chair and started selling the wee to my customers.

At the place, there were so many people selling the wee so if anyone enters the premises, I ask the person what he or she wants and if the person states he or she wants wee to buy then I sell it to him or her. whilst there, at about 5:30 pm, I was sitting with two others when one guy came to tell me that he wanted to buy hashish and I told him that I do not sell hashish. They were two in number. They stood behind me and started

smoking cigarette. I stood up and went to the roadside. I suspected them to be strangers so I decided to be by the roadside to observe their movements. They held me and brought me to where I was sitting. I covered the drug with some clothes so they removed the cloth and retrieved the drugs. People there were also arrested. The drugs were shown to me and I claimed ownership of the drugs which they suspected to be narcotic drugs. I was brought to the station.”

● **Admission** - The accused admitted in his testimony and trial that he was at Dansoman beach where he was arrested by the Police Officers. In his caution statement, he admitted that he was in possession of narcotic drugs.

Exhibit A was taken in the presence of an independent witness who certified that the content was read and explained to the accused. The evidence on record shows that the accused had in his possession narcotic drugs. He knew the nature of the drug, which he referred to it as ‘wee.’ Knowing that his action was unlawful, he concealed the drugs when the police approached him and deliberately left the scene.

● In the case of **Ellis Tamakloe V. The Republic Criminal Appeal J3/2/2009 17th February 2010** – Justice Ansah JSC Stated:

*“The ingredients of the offence of possessing narcotic drugs as can be gleaned from the offence created by section 2 of the Narcotic Drugs Control, Enforcement and Sanctions Law, 1990 PNDCL 236 which provided that: “(2) Any person who without lawful authority, proof of which shall be on him, has in his possession or under his control any narcotic drug commits an offence.”*

*To secure a conviction of a person charged with the offence of possessing a narcotic drug under PNDCL 236, the prosecution must prove beyond reasonable doubts that*

*i. “the appellant had custody or control of the drugs;*

*ii. he knew of the presence of the drugs; and he knew of the nature of the drugs possessed”*

●Justice Dennis Dominic Adjei in his book titled: **Contemporary Criminal Law** (1st Edition) page 468 stated:

*“In order to ensure that people do not sacrifice the health of others for profit, it is important that dealings in narcotic drugs are limited if not prevented by the law. Abuse of narcotic drugs have numerous health implications for the individuals and injure the general society at large...”*

•The accused failed to prove that he had lawful authority to possess/ traffic narcotic drugs. The prosecution established its case beyond reasonable doubt. The accused is hereby convicted of the offence. Taking into account the plea of mitigation, the accused is hereby sentenced to 10 years imprisonment with hard labour -the minimum custodial sentence in respect of the offence charged (unlawful possession or control of narcotic drugs or plant (for trafficking)).

**(SGD)**  
**H/H EVELYN E. ASAMOAH (MRS)**  
**CIRCUIT COURT JUDGE**