

IN THE CIRCUIT COURT 3 HELD AT ACCRA ON TUESDAY THE 28<sup>TH</sup> DAY OF  
FEBRUARY 2023 BEFORE HER HONOUR SUSANA EDUFUL (MRS.), CIRCUIT COURT  
JUDGE

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COURT CASE NO. D21/160/2021

THE REPUBLIC

VRS

AUGUSTINA MENSAH

**JUDGMENT**

The Accused Person is charged with the offence of Unlawful Possession of Narcotic Drugs contrary to section **37 (1) of Narcotic Control Commission Act, 2020 (Act 1019)**.

The facts of the case as presented by Prosecution are that “The Ghana Police is the Complainant in this case. The Accused Augustine Mensah is a scrap dealer who lives at Stricker close to Kasapreko Junction on the Spintex Road. On 19/10/2020, The Police acting upon intelligence gathered that the Accused was dealing in narcotic drugs in a kiosk, proceeded to the area and arrested the Accused. A search was conducted in the kiosk and one and half slabs of dried leaves suspected to be narcotic drugs was found in his microwave, sixty-six (66) wraps and a quantity of similar dried leaves substances in the black polythene bag all suspected to be narcotic drugs.



The Accused in his Caution Statement admitted the offence and stated that he has been selling the substances. He mentioned one person named simply as 'GH' who lives at Ashaiman as the one who supplied him with the suspected dried leaves. He however failed to lead the Police to the arrest of the said 'GH'. Meanwhile the exhibits were forwarded to Police forensic laboratory for examination and report.

The plea of the Accused Person was taken on October 27, 2020. He pleaded not guilty to the charge levelled against him. The Prosecution was therefore directed to prove the charge against Accused. The prosecution called 3 witnesses and tendered 5 exhibits

#### **THE EVIDENCE:**

PW1 was Detective Sergeant Desmond Olongo stationed at Baatsona District Police Headquarters, Accra. According the PW1 he is the investigator in this case. On October19,2020 he was on duty when Chief Inspector Albert Anning who was part of the Police Patrol Team made up of seven men arrested and brought the Accused to the station, along with one and half slabs of dried leaves and 66 wraps of some dried leaves suspected to be narcotic drugs. It was intelligence gathered by Police that led to this arrest. The Accused was arrested when the Police Patrol Team visited the kiosk of the Accused. PW1 took statements from the arresting officers. He also obtained an investigation caution statement from Accused as well as his charge statement which were tendered in evidence as exhibit A, A1 and B respectively. The real exhibits which accompanied the Accused were sent to the forensic laboratory. The report from the forensic laboratory were tendered as exhibit DD1. The photograph of the exhibit was also tendered in evidence as exhibit E and the real substance exhibit F series.

PW2 was Robert Tsawodzi. He is also stationed at Baatsona District Police Headquarters, Accra.

He was part of the arresting team, led by DSP James Asiedu. According to PW2 the team arrested Accused Person at a kiosk at Sticker, near Coca-Cola roundabout along with one and half Tablet of Dried leaves and 66 wraps in a black polythene bag suspected to be Narcotic Drugs hidden in his microwave in the wooden kiosk.

PW3 was Chief Inspector Albert Anning Stationed at Baatsona District. According to him on October 19, 2020 they gathered intelligence that Narcotic Drug trade was on the ascendency in the locality. Therefore, DSP James Asiedu embarked on an operation to arrest suspects involved. During this operation, the Police arrested the Accused Person with the said substance hidden in a microwave inside the Kiosk. When Accused was arrested he mentioned someone nick named GH of Ashiaman as the person who supplies him, the stuff. However, all efforts to have the said person arrested proved futile.

## **ACCUSED PERSON'S EVIDENCE**

The Accused denied the charge against him and in defence stated that on October 19, 2020 he was at his place of abode with one other person chatting when the policemen accosted him and requested to search his place of abode and he obliged them. After the search the Police came out with some substance which the Police claimed the found in a micro wave in the room. According to Accused there he explained to the police he did not have any knowledge of the content in the microwave as the microwave oven belongs to one GH who rented his unexpired term to him which is his current his plaice of abode. The Accused suspect that believes because he is a Rastafarian the Police have the misconception that he deals in drugs which is in fact not true. According to Accused the Police arrested two other persons on that

day but they were release after they were paraded before the station master. The Accused further stated that the Policemen who came to his place of abode did not see him using or selling anything to anyone. According to Accused the Police did not make any effort to apprehend the said 'GH.'

#### **BURDEN OF PROOF:**

This is a criminal trial and the prosecution has the burden to prove all the ingredients supra beyond a reasonable doubt. For section 11(2) of the Evidence Act NRCD 323 states:

*' in a criminal action the burden of producing evidence when it is on the prosecution as to any fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of the fact beyond a reasonable doubt'.*

Section 37(1)(a) of the Narcotics Control Commission Act, Act 1019 which the accused has been charged under, the offence created is intended to be one of strict liability. What is meant is that if prosecution establish the basic facts to the satisfaction of the court accused then assume the burden to prove otherwise. Humphrey J. delivery a judgment regarding an offence of strict liability in the case of **R V CARR – BRAND** [1943] K.B 607 that:

*'Either by statute or common law some matter is presumed against an accused person, unless the contrary is proved. That the burden of proof required is less than that at the hand of prosecution in proving a case beyond a reasonable doubt and that the burden may be discharged by evidence to satisfy the jury of the probability of that which the accused is called upon to establish'*

This indeed is true under section 13 (2) of the Evidence Act, that the burden on accused on a matter that is in issue required him to establish his case by the civil standard of the balance of probabilities.

## **INGREDIENTS OF THE OFFENCE:**

For the charge to succeed the Prosecution must prove the following ingredients of the offence:

- (i). Custody or control of the drug by the Accused Person
- (ii). Knowledge of the presence of the drug
- (iii). Knowledge of the nature of the drug possessed proof of which can be actual or constructive
- (iv) the Accused had no lawful authority for possessing the narcotic substance

## **EVALUATION OF THE EVIDENCE AND APPLICATION OF THE LAW:**

As stated supra that the Prosecution must prove the ingredients of the offence which includes; custody of the drug by the Accused Person, possession, knowledge of the nature of the drug possessed as well as the Accused's lack of lawful authority for the possession of the drug.

In the case of **SEWONOMIM alias ATUAHENE v REPUBLIC** [1976] G.L.R 18, where Osei – Hwere J. (as he then was) said this about possession:

‘It is commonly agreed that the concept of possession comprises the corpus or the element of physical control and the animus or the intent with which such control is exercised.

Possession is viewed from two main angles in law. That beyond proving that what Prosecution found was cannabis, a narcotic substance, it must show that Accused knew of the presence of the substance and in fact knew that it was a narcotic substance.

In the case of **AMARTEY v. THE STATE** [1964] GLR 256, Ollenu JSC said this about knowledge of the substance possessed:

‘what is possession, proof of which, without more, makes a person guilty....

Possession must be possession with knowledge of the nature and quality of the article possessed; awareness that the article possessed is opium Indian hemp physical possession without that knowledge is no offence. Therefore, to succeed the Prosecution must prove legal possession that in addition to proving physical or constructive possession, they must go further to lead evidence which establishes that the defendant had the requisite knowledge or reasonable to presume that the defendant proved to be in possession, well knew or ought or have known that the article he possessed was ‘opium or Indian hemp’.

Prosecution led evidence that the Accused Person had the substance inside a microwave in his kiosk. According to PW1 it was the Accused who pointed to the micro-wave in which he kept the narcotic substance. The Accused told Police that the substance was brought to him by GH who lives at Ashiaman. According to PW1 he was there when the person who sealed the substance retrieved it from a brown envelope in the presence of the Accused and an independent Witness Eric Sarfo.

From the Investigation Caution Statement of Accused Exhibit A taken on October 20, 2022 Accused states “I was in my Kiosk with my thirteen-year-old daughter called Patience when the Police suddenly opened the door to the kiosk. The officers told me they heard I deal in drugs and that I should show them where am keeping it. I told them I did not deal in drugs and they searched me but later told me to wait at the entrance of the kiosk. The Officers concluded a thorough search and retrieved the exhibit from the micro-wave belonging to my former tenant”

From the Investigation Caution Statement, the Accused agreed that the Police actually found the substance in the microwave which was in his possession in the kiosk. The Accused

however in his evidence to the court denies knowledge of the existence of the exhibit found in the microwave. He also denies ownership of the microwave. He states that the former tenant who sublet his tenancy to him is the owner of the microwave and therefore the best person to answer why he possessed and kept the narcotic substance.

The court presumes the Accused is the owner of the kiosk and was living in the kiosk with his daughter and the substance found was in the custody and in his possession. The burden then shifts of the accused to raise a doubt to establish otherwise under section 13 (2) of the Evidence Act. Accused has not established any evidence that the said GH ever lived there. There is no evidence of payment of money by Accused to the said GH or any document of transfer. The Accused has also not called any person to testify that the said 'GH' ever lived there not even the landlord or the owner of the kiosk.

How did the Prosecution prove knowledge of the presence of the drug as well as knowledge of the nature and quality of the drug? To discharge this duty the court has held in the case of **ASAMOA v THE REPUBLIC [1962] GLR 236** that it is not necessary for Prosecution to lead evidence to establish actual knowledge but evidence from which knowledge could be inferred is sufficient.

In effect, the court draws on a number of inferences to determine knowledge. The Court shall define inference in the case of **NYAMO v TARZAN TRANSPORT [1973] 1GLR** as: deduction from the evidence and if it is a reasonable deduction it may have the validity of legal proof. The attribution of occurrence to a cause is always a matter of inference'.

**Per** Section 37(1) of the Narcotics Control Commission Act, Act 1019, the law is intended to be one of strict liability in the sense that if Prosecution proves that the substance was found in the custody of Accused then the onus shifts to the Accused to demonstrate that he had no



knowledge about the substance. Humphrey J. delivery a judgment regarding an offence of strict liability in the case of **R V CARR – BRAND** [1943] K.B 607 that:

‘Either by statute or common law, some matter is presumed against an Accused Person, unless the contrary is proved. That the burden may be discharged by evidence to satisfy the jury of the probability of that which the Accused is called upon to establish’

The substance was found in a microwave which is concealed. This shows that the Accused knew that it was unlawful to possess the narcotic that is why the substance was not displayed.

The court accordingly finds Accused guilty of the offence Charged and hereby convict him.

## **SENTENCE**

The prosecution have not proved trafficking to the satisfaction of the court the court presumes the charge is under Section 37(2)(a) of the Narcotics Control Commission Act, Act 1019 for use. The minimum sentence under the law for the offence a fine of 200 penalty unit and not more than 500 penalty unit and in default not more than 15 months imprisonment.

This court has taken into consideration the fact that the Accused is a first-time offender who is not known to the law. The court will however opt for the maximum sentence under the law so that it will serve as a deterrent to the public.

The Accused is sentence on the offence charged to a fine of 500 penalty units and in default 15 months imprisonment with hard labour.

The Registrar of the court is ordered to dispose of the substance by complying with the procedure specified under Section 108 of Act 1019. The Registrar is to leave a small sample for the purposes of appeal.

**PROSECUTOR**

**CHIEF INSPECTOR CHRISTINE BANSAH FOR PROSECUTION**

**LEGAL REPRESENTATION**

**BEN SEVOR FOR ACCUSED PERSON**

**H/H SUSANA EDUFUL (MRS)  
(CIRCUIT COURT JUDGE)**