

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT  
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA  
ON TUESDAY, 23<sup>RD</sup> MAY, 2023

SUIT NO. D14/11/23

THE REPUBLIC  
VRS  
KWAME YEBOAH

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RULING  
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The Accused Person stands arraigned before this court on eight counts. On count one, he is charged with Dangerous Driving contrary to *section 1 of the Road Traffic Act, 2004, Act 683*. On count two, three, four, five, six and seven, he is charged with *Negligently Causing Harm contrary to section 72 of the Criminal Offences Act, 1960 (Act 29)*. Finally, on count eight, he is charged with the offence of Driving Without a License, contrary to *section 53 of the Road Traffic Act, 2004*.

The particulars of offence for count one are that on the 6<sup>th</sup> day of May, 2021 at about 6:30 am, Accused Person drove a Mercedes Benz sprinter bus with registration number GR 6117-20 along the Accra -Tema stretch of the Kwame Nkrumah Motorway in a dangerous state and a dangerous manner while carrying 22 passengers on board, resulting in a road crash.

The particulars of offence for count two, three, four, five, six and seven are that on the aforementioned date, time and place and within the jurisdiction of the court, while driving the said vehicle, he did so in a dangerous state and manner leading to a road crash which resulted in the death of Peace Kuevor, 64, Peter

Owusu Appiah, 34, and Ignatius Akomba Sekyi 42 and which also led to the injury of Emmanuel Asempa, Randy Agyei Boakye and Thompson Korshie Agbozo who were all passengers on board the bus.

On count eight, the particulars of offence are that on the even date, time and place and while driving the said vehicle, he did so without a valid driver's license.

The brief facts of the case as presented by prosecution is that on the 6<sup>th</sup> day of May, 2021 at about 6:30am, accused Kwame Yeboah of Tema Community 9 was a driver in charge a Mercedes Benz Sprinter bus with registration number GR 6117-20. The accused was transporting 21 passengers together with his mate from Accra to Aflao along the Kwame Nkrumah Motorway. At a section of the road near the B & J beverages and opposite the Axel weigh station, the accused driver who was excessively speeding despite knowing the bad state of the rear tyres of his vehicle, refused to heed to suggestions from some of the passengers to reduce the pace at which he was moving.

The dangerous act of the accused driver led to the burst of the offside rear tyre of the vehicle. The sprinter bus which was in the inner lane prior to the tyre bursting, veered towards the offside direction and into the central reserve and forcibly discharged some of the rear seat passengers on the offside shoulder of the lane of the oncoming vehicles. The vehicle suffered severe damages and all the passengers including the accused driver sustained injuries.

They were rescued and rushed to the Tema General Hospital for treatment. Three of the passengers namely; Peace Kuevor, aged 64, Peter Owusu Appiah aged 34, Ignatius Akonbia Sekyi aged 42, were pronounced dead on arrival. The

passengers who survived were treated and discharged. The scene of accident was visited, measurements were taken and sketch drawn.

The accident vehicle was examined by a Technical Engineer from the Driving and Licensing Authority who submitted his report. Post-mortem examination was performed on the bodies of the deceased persons by a pathologist and the reports of their causes of death were received. In the course of investigation, police found out that, the accused driver had his left leg amputated and was wearing a prosthetic leg. It was also revealed that the accused was driving without a valid driver's license.

After investigation, a duplicate case docket was prepared and sent to the Attorney General's officer for advice. On receipt of the advice, the accused driver was charged with the offences stated on the charge sheet to appear before this honourable court.

The charges were read and explained to the Accused Person in his preferred language of twi and he pleaded not guilty to count one, two, three, four, five, six and seven. He also pleaded guilty simpliciter to count eight. He was convicted on his own plea on count eight and sentenced to a 60-day term of imprisonment.

Prosecution thus had the sole duty of leading evidence to establish a prima facie case against Accused Person on counts one through to count seven. The veritable Dotse JSC in reading the decision of the Supreme Court in the case of *Amaning v. The Republic [2020] GHASC 47*, had this to say by way of a prologue:

“William Blackstone, an 18<sup>th</sup> century English jurist in a statement on the hallowed principle of “Innocent until proven guilty:-rights of an accused person” upon which our criminal justice administration has been founded in Article 19(2) (c) of the Constitution, 1992 stated as follows: “better that ten guilty persons escape than that one innocent suffer”. The above constitutes the fulcrum of our criminal justice jurisprudence”.

In the case of *Domena v. Commissioner of Police [1964] GLR 563* the Supreme Court per *Ollenu JSC* (as he then was) commented on the burden and standard of proof as such: “Our law is that by bringing a person before the court on a criminal charge, the prosecution takes upon themselves the onus of proving all the elements which constitutes the offence to establish the guilt of the defendant beyond reasonable doubt, and that onus never shifts. There is no onus upon an accused person except in special cases where the statute creating the offence so provides...”

That being so, prosecution may lead credible and positive evidence to upset that presumption. A court thus commences a criminal trial where an accused has pleaded not guilty on the rebuttable presumption that the accused person is innocent until proven guilty.

The onus lies on prosecution to lead evidence to establish a prima facie case against the accused persons by the close of their case. It is only then, that prosecution would be deemed, prima facie to have upset the presumption of innocence in favour of the accused and he would in turn be called upon not to prove his innocence, but to raise a reasonable doubt as to his guilt.

Prosecution in proof of its case called four witnesses.

#### **THE EVIDENCE IN CHIEF OF PW1**

According to PW1, he was a passenger on board the vehicle which was being driven by the Accused Person on the said date. His evidence is that he was on the third sitting row and next to a passenger who was sitting close to the nearside window.

Prior to the vehicle moving, he realized that the driver's mate bent down and was constantly checking something underneath the bus. A female and male passenger questioned the mate, but the Accused Person failed to check the issue before moving the vehicle.

He continued that while on their way and somewhere around the axle weighing station, he heard the sound of a burst tyre and saw the Accused trying to steer the wheel towards the left and then to the right. The bus turned over. He felt blood on his head and later felt that he was being moved out by some people.

PW1 said that almost all the passengers sustained injuries and they were taken to the Tema General Hospital. At the time of his discharge, he saw the Accused Person who appeared to be suffering and complained of having lost all his money. His brother gave the Accused money to buy food.

#### **EVIDENCE IN CHIEF OF PW2**

PW2's evidence is that he was also a passenger in the vehicle. He was sitting on the last but one row of seats, and that along the way, he realized that the Accused Person was speeding beyond expectation. He shouted from the back for the Accused Person to slow down. A female passenger was also complaining bitterly about the way the Accused was speeding.

PW2 continued that somewhere along the axle weighing station, one of the rear tyres got burst, and that even then, he asked the Accused Person to take his time and control the situation but eventually the rear section of the vehicle turned over and he fell unconscious. He sustained bodily injuries and even after being treated at the hospital, he still nurses a fractured bone in his left arm coupled with other bodily injuries.

### **THE EVIDENCE IN CHIEF OF PW3**

PW3 was also a passenger in the vehicle that was driven by the Accused Person. PW3 says he was sitting at the last row of seats in the bus, and that along the way, the Accused Person was speeding excessively and failed to heed their plea for him to reduce his speed. PW3 says that a fair complexioned woman continuously complained about the speed of the Accused Person.

PW3 says further that in the course of the journey, one of the rear tyres got burst and the rear gate of the vehicle opened. He fell out together with the other passengers who were occupying the rear seat. He got injured and is still undergoing herbal treatment for the injuries he sustained.

## **THE EVIDENCE OF PW4**

PW4 is the investigator. He tendered in evidence the following; Exhibit A and A1 as the investigation caution statement and charge statement of Accused Person, Exhibit B series (B, B1 and B2) as the medical forms of PW1, PW2 and PW3, Exhibit C series as the inquest form, post mortem and burial permit of Peace Kuevor, Exhibit D series(D, D1, D2) as the inquest form, post mortem report, burial permit of Peter Owusu Appiah, Exhibit E series (E,E1 and E2) as the inquest form, post mortem and burial permit of Ignatius Akombia Sakyi, Exhibit F as the DVLA accident report on Mercedes Benz bus and Exhibit G as the sketch of the accident scene.

At the close of prosecution's case, in reliance on section 173 of the **Criminal and other Offences Act, 1960, Act 30** and a plethora of case law including **Tsatsu Tsikata v. The Republic [2004-2005] SCGLR 1068**, the court hereby determines that it has established a prima facie case against the accused person on all seven counts.

Prosecution has led evidence to establish all the necessary ingredients of count 1, count 2, count 3, count 4, count 5, count 6 and count 7 against the accused person. The evidence has not been discredited in anyway under cross-examination, the evidence is manifestly reliable and the evidence at present lends itself to only one inference, the prima facie guilt of accused person.

Accordingly, he is hereby called upon to open his defence to the charges if he so desires.

(SGD)

**H/H BERTHA ANIAGYEI (MS)  
CIRCUIT COURT JUDGE**

D.S.P J ASAMANI FOR THE REPUBLIC PRESENT