IN THE CIRCUIT COURT DUNKWA-ON-OFFIN; SITTING ON 18TH OCTOBER 2023

CORAM: HIS HONOUR YAW POKU ACHAMPONG

CASE NO.: B18/08/2023

THE REPUBLIC

VS

ISHMAEL IBRAHIM

ACCUSED PERSON PRESENT

DETECTIVE CHIEF INSPECTOR PETER SADAARI FOR PROSECUTION, PRESENT

ISAAC RICHMOND MENSAH FOR ACCUSED PERSON, ABSENT

DECISION ON SUBMISSION OF NO CASE

Section 173 of the *Criminal and Other Offences(Procedure)Act*, 1960(Act 30) states:

> *If at the close of the evidence in support of the charge, it appears to the Court that a case is not made out against the accused sufficiently to require him to make a defence, the Court shall, as to that particular charge, acquit him.*

In accordance with the above provision of the law may a lawyer make a submission which seeks to convince the court that no case has been made out against an accused on a particular charge, sufficiently to require him to open his defence.

It is instructive to note that section 11 of the Evidence Act, 1975(NRCD 323) requires that a decision be made by the court on all the evidence before the court.

Section 11 of NRCD 323 states:

> *(1) For the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue.*

(2) 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.

(3) In a criminal action the burden of producing evidence, when it is on the accused as to any fact the converse of which is essential to guilt, requires the accused to produce sufficient evidence so that on all the evidence a reasonable mind could have a reasonable doubt as to guilt.

(4) In other circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence.

The *Evidence Act* came into being after Act 30 had been enacted. Therefore, for a court to hold that there is no case against an accused, the prosecution's case against the accused should be so bad that it fails to connect the accused to the crime sufficiently. Because by section 11 of the *Evidence Act* supra, ideally, the court will have to have the benefit of making or taking a decision on all the evidence, including the evidence of Accused, for efficient determination of the matter.

Accused herein was charged as follows, as on the charge sheet herein:

STATEMENT OF OFFENCE

ROBBERY: CONTRARY TO SECTION 149 OF ACT 29/60 AS AMMENDED[sic] BY ACT 646/2003

PARTICULARS OF OFENCE

ISHMAEL IBRAHIM: AGE 40: GALAMSEYER; For that you and four others now at large on the 2nd day of November 2022 about 1:00am at Nkotumso near Ayanfuri in the Central Circuit and within this court did rob Frank Tawiah of cash a sum of GH¢880,000.00.

Upon distillation of the facts attached to the charge sheet in support of the charge herein, the following as itemized below are the salient facts:

1. The complainant is called Frank Tawiah Boakye and is a businessman who lives at Nkotumso.

2. Accused is a small scale miner and he lived at Wassa Ataase.

3. There are four other people who are suspects in this case who are at large.

4. On 31st October 2022 around 5:00pm, Complainant sent into his room cash the sum of GH¢880,000 made up of GH¢200.00, GH¢100.00 GH¢50.00 GH¢20.00 GH¢10.00 and GH¢5.00 denominations in a bag referred to as Ghana must go".

5. On 2nd November 2022 at about 1:00am, five men armed with AK 47 rifles and pump action guns went to the house of Complainant.

6.Accused and two others broke the door to Complainant's room and gained ingress.

7. Two of them attacked the complainant and Accused hit the head, chest, arm and the left side ribs of the complainant's wife by name Constance Serwaa who was then in the room with Complainant.

8. Accused took cash the sum of GH¢880000.00 and they left the house amidst firing of gunshots.

9. Accused and the four suspects left Ntotumso through Akrofuom road.

10. A report was made to the police and Accused was arrested when he was identified by Constance Serwaah, as the one who assaulted her and took the bag containing money.

11. A search was conducted in the room of Accused in the room of Accused and 17 live cartridges were found.

Prosecution called one witness – the investigator herein. The following, *inter alia*, is the body of the witness statement of PW1 which metamorphosed into the evidence-in-chief of PW1:

"...

4. On 02/11/2022, a case of robbery involving the accused was referred to me for investigations.

…

9. The Complainant led me to the scene of crime, thus his house where the robbery took place. I inspected the and found that the room had been ransacked and the room's door forced opened[sic]. I took photograph of the ransacked room.

10. On 07/11/2022 about 7:10pm, Constance Serwaah @ Owusu Ansah spotted the accused at Ayanfuri township and identified him as the one who beat and injured her with a gun and took the money contained in a "Ghana must go bag". She therefore called the Ayanfuri Police who went and effected his arrest.

11. On same day, accused was asked to lead the Police to his place of abode for a search to be conducted and he led the Police to rooms at Wassa Nananko and Wassa Ataase where he does not live. Later, he led the Police to his actual room at Wassa Ataase where upon arrival, the Police detected that someone had freshly broken into the room.

12. A search was conducted in the room and found 17 live cartridges made of nine pieces of AAA, three of BBB, three of Supreme and two pieces of other brands.

13. I took photographs of the live cartridges.

14. I also obtained investigation caution statement from the accused in the presence of an independent witness.

15. On 21/11/2022, a further search was conducted in the room of the accused and found GH¢200.00 made of brand new GH¢5.00 denomination concealed in a half pair of shoes.

16. The accused in his further investigation caution statement stated that the brand new denominations were given to him by Isaac Baidoo @ IK.

17. Statement was therefore taken from the said Isaac Baidoo @ IK and stated that he had not given any such money to the accused. Therefore I was convinced that the money was part of the Complainant's money which he was robbed of."

I find the statement in para 4 of the witness statement of PW1 to be odd. You need to investigate the case before you can conclude that it is robbery or some other offence. I therefore find it wrongful for an investigator to say a case of robbery was referred to her when she was yet to conduct investigations into the matter.

The said Constance Serwaa who the police say identified Accused in Ayanfuri town culminating in his arrest, did not testify in this matter. The complainant also did not testify.

PW1 tendered in evidence what she said was the investigation cautioned statement of Accused. It was admitted in evidence and marked Exhibit A. The statement PW1 attributes to Accused in Exhibit A reads:

> "I am a plumber as well as electrician and stays[sic] at Wassa Ataase, Western Region. I was not among the perpetrators that went and robbed complainant Frank Tawiah cash the sum of GH₵880,000.00 as alleged by the complainant's wife that she saw me. Frankly speaking, I do not have any friend at Denkyira Nkotumso. I ply the road by a motorbike or commercial car. On 1/11/22 during the day, I was at Wassa Ataase fixing someone[sic] tap for him. Same day, in the evening, I went to Wassa Nananko and passed the night with my wife Owusuaa. We went to bed around 9:00pm with my children but I did not go out until the following morning I woke up from bed around 6:00am. Again, I do not know the complainant's wife. I have not set my eyes on her before. Am[sic] not a hunter, neither do I have gun. In[sic] regards to the 17 live BB ammunitions[sic] that was found on a[sic] shelves in my room, I had no knowledge about it as how it got into my room. When I was arrested by Police at Ayanfuri, Police escorted me to my house and it was there that I detected that someone has[sic] broken into my room and placed it on a[sic] shelves. I highly suspected that 17 live BB ammunitions[sic] found in my room was planed[sic] by someone. I further added[sic] that I did not hear any robbery case that occurred at Nkotumso until 8/11/22 around 7:00pm, I spotted a Police officer at

Ayanfuri. it was the police officer who informed me of the case and caused my arrest."

PW1 tendered in evidence the said further investigation cautioned statement of Accused. It was admitted in evidence and marked Exhibit B. the statement in Exhibit B that PW1 reads:

"The cash the sum of GH₵200.00 made of brand new GH₵5.00 currency notes found in my room was given to me by one I.K who is currently staying at Wassa Nkonya. I do not known[sic] the serieal[sic] number of the demoniation. It was about seven months ago that I went and fixed his plumbing work in his house for him at Wassa Nkonya. After completion of the work, the said I.K paid me GH₵500.00 which I have spent GH₵300.00 leaving GH₵200.00 which I rapped[sic] with a black polythene bag and concealed in a half pair of my black shoe. I further added[sic] that the money found in my room is not the complainant's money."

Marked Exhibit C was a document PW1 said contained the charged cautioned statement of Accused. Accused is said to have relied on his former statement given to Police on 09th November 2022.

PW1 tendered in evidence the AAA cartridges he referred to in paragraph 12 of her witness statement supra. They were admitted in evidence and marked collectively Exhibit D.

PW1 tendered in evidence the BBB cartridges she referred to in her witness statement. They were admitted in and marked Exhibit E as a set.

PW1 tendered in evidence the supreme cartridges, they were marked Exhibit E as a collective. She also tendered the other cartridges she referred and they were together marked Exhibit G.

It then came to a point when the prosecutor gave a certain item to PW1.
PW1 identified that item as GH¢200.00 made up of GH¢5.00 notes which she referred to in paragraph 15 of her witness statement. PW1 sought to tender that item in evidence. The court made her count the said money and it was 41 notes ie GH¢205.00. The court made the court clerk also count the money and it was 41 notes ie GH¢205.00.

Counsel for Accused raised the following objection:

> "In paragraph 15 of the witness statement of the witness, she stated she conducted a search and found GH¢ 200.00 made of brand new GH¢5.00 denomination but the money this witness wants to tender in evidence is not the GH¢ 200.00 as stated in her witness statement but GH¢205. 00 and GH¢205.00 are not the same. Therefore, the money that the witness intends to tender as per paragraph 15 of her witness statement is not the money the witness is currently holding and it is not the same as in the witness statement and therefore the GH¢205.00 cannot form part of the case of the witness."

The Prosecution reacted saying:

> "We are saying that this money we are seeking to tender in evidence is the exact money the police retrievd when a search was conducted in the room of the Accused person. This was counted in the presence of the Accused person and it amounted to 200 as stated in the witness statement of the witness. It is common that fresh notes like these, some two of them may get stuck and when counting, you may count two as one. I sincerely believe that that might have been the circumstance that resulted in the inaccuracy of the figure. We humbly pray that it is accepted and admitted in evidence."

The Court then ruled:

> "By section 51 of the *Evidence Act*, it is relevant evidence that is admissible. What is relevant to this case is GH¢ 200.00 and not GH¢205. In fact GH¢ 5.00 new notes was

mentioned by the witness and so GH¢ 5.00 new notes may be relevant but as per section 52 of NRCD 323, relevant evidence may be excluded if it has the tendency of confusing the issues. PW1 mentioning GH¢ 200.00 in her evidence-in-chief and seeking to tender in evidence GH¢ 205.00 has the tendency of confusing the issues. Therefore the set of 41 notes of GH¢ 5.00 is rejected as evidence and marked R1."

The following, *inter alia*, came up during cross-examination of PW1 by Counsel for Accused person:

"...

Q. I put it to you that Accused person was not one of the people who forcefully opened the complainant's door and allegedly robbed him of GH¢880 000.00

A. That is not true.

Q. Do you still stand by paragraph 10 of you witness statement.

A. Yes.

Q. I put it to you that the said Constance Serwaah never saw Accused person and identified him as the one who beat and injured her with a gun.

A. That is not true.

Q. Do you still stand by paragraph 12 of your witness statement.

A. Yes.

Q. So do you want this Court to believe that the 17 live cartridges were put in the room by the Accused person,

A. Yes.

…

Q. I put it to you that the 17 live cartridges that you found in Accused person's room was planted there by an unknown person.

A. That is not true.

Q. Do you still stand by your statement in paragraph 17 of you witness statement that you were convinced that the money that was found in Accused person's roo was part of the complainant's money.

A. Yes. I was convinced because the complainant claimed that there were some GH¢ 5.00 denominations that were brand new, among the money that he kept in his room.

Q. You wil agree with that every money has a serial number to identify it.

A. Yes.

Q. and the complainant gave you the serial numbers of his alleged brand new notes.

A. He did not give me the serial numbers but he told me he went to the Ghana Commercial Bank Dunkwa branch to change some of the higher denominations to the GH¢5.00 notes but he did not lead me to the bank to ascertain the truth.

Q. I put it to you that that your statement at paragraph 17 that the money you found in Accused person's room convinced you that it was part of Complainant's money has no basis.

A. It has basis because the complainant claimed that there was some brand new GH¢ 5.00 denominations among the money that he kept in his room and so upon seeing the GH¢ 5.00 denominations from Accused person's room, he(Complainant) claimed that that money was his.

Q. In paragraph 17 of your witness statement, you never stated that the complainant told you that the brand new money belongs to him but rather it was you who is convinced that it was part of that money.

A. Yes I never stated that. But in the course of investigations, the money retrieved from Accused person's room was shown to the complainant and he claimed that the money was part of money of the cash kept in his room.

Q. I put it to you that the money you found in Accused person's room belongs to him(Accused person).

A. That is not true.

…"

Ollennu J(as he then was) in *Majolagbe v. Larbi* [1959] GLR 190 made reference to a dictum he gave earlier in *Khoury and Anor v Richter* which judgment was delivered on 8th December, 1958, as regards proof in law. That dictum has been referred to with approval in *Klutse v. Nelson* (1965)GLR 537 @ 542 and also *Baah Ltd v. Saleh Brothers* [1971] 1GLR 119. It is:

> *"'Proof in law is the establishment of facts by proper legal means. Where a party makes an averment capable of proof in some positive way, e.g. by producing documents, description of things, reference to other facts, instances, or circumstances, and his averment is denied, he does not prove it by merely going into the witness box and repeating that averment on oath, or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances, from which the Court can be satisfied that what he avers is true'."*

In *Zabrama v. Segbedzi* [1991] 2 GLR 221 @ 246, Kpegah J.A. (as he then was) whilst looking at proof in law like came up in *Klutse v. Nelson* supra and *Baah Ltd v. Saleh Brothers* supra stated:

> *"… a person who makes an averment or assertion, which is denied by his opponent, has a burden to establish that his averment or assertion is true, and he does not discharge this burden unless he leads admissible and credible evidence from which the fact or facts he asserts can safely be inferred. The nature of each averment or assertion determines the degree and nature of the burden."*

Sophia Adinyira JSC stated in *Ackah v. Pergah Transport Limited and Others*[2010] SCGLR 728 at page 736 that:

> *"It is a basic principle of the law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail. The method of producing evidence is varied and it includes the testimonies of the party and material witnesses, admissible hearsay, documentary and things(often described as real evidence), without which the party might not succeed to*

establish the requisite degree of credibility concerning a fact in the mind of the court or tribunal of fact such as a jury. It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact is more reasonable[sic] than its non-existence. This is a requirement of the law on evidence under sections 10 and 11 of the Evidence Decree[sic]."

Section 10(1) of NRCD 323 defines 'Burden of Persuasion' and it states:

For the purposes of this Decree, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court.

Section 10(2) of the Evidence Act adds that: *The burden of persuasion may require a party to raise a reasonable doubt concerning the existence or non-existence of a fact or that he establishes the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.*

Section 11 of NRCD 323 defines 'Burden of Producing Evidence' and states further as follows:

(1) For the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue.

(2) 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.

(3) In a criminal action the burden of producing evidence, when it is on the accused as to any fact the converse of which is essential to guilt, requires the accused to produce sufficient evidence so that on all the evidence a reasonable mind could have a reasonable doubt as to guilt.

(4) In other circumstances the burden of producing evidence requires a party to produce

sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence.

It was held in *Kru v. Saoud Bros & Sons* [1975] 1GLR 46, CA at page 48 per Apaloo JA that:

"In so far as the issue involves the sufficiency of proof, the accepted statement of the common law is: "As a general rule, courts may act on the testimony of a single witness, even though uncorroborated; or upon duly proved documentary evidence without such testimony at all. And where the testimony is unimpeached, they should act on it and need not leave its credit to the jury.""

The learned judge making reference to *Ayiwa v. Badu* [1963] 1 G.L.R. 86, S.C.; *Republic v. Asafu-Adjaye (No. 2)*, Court of Appeal, 1 July 1968, unreported; digested in (1968) C.C. 106 and *Commissioner of Police v. Kwashie* (1953) 14 W.A.C.A. 319, further stated also at page 48 that:

"...judicial decisions depend on intelligence and credit not the multiplicity of witnesses produced at the trial."

In *Logos & Lumber Ltd v. Oppong* [1977] 2 GLR 263, CA, it was held that a court could act on the testimony of a single witness provided that:

(i)He was an honest witness; (ii) There was nothing in his background to cast doubt on his veracity;
(iii)He had no motive to misrepresent facts or be biased; and
(iv)His evidence was in no way tainted, i.e. he was not an accomplice.

The evidence of the single witness called by the prosecution in the instant case falls short of what can culminate in the conviction of a person facing prosecution on the charge herein.

I find that Prosecution has not made out a case against Accused sufficiently to require him to open his defence. I agree in toto with the defence on the submission made before this court that there is no case for Accused to answer. I therefore accept the invitation by Counsel for Accused to acquit and discharge Accused person.

The item marked R1 should be given back Accused.

Section 141(1) of Act 30 (as amended) states:

> *If on the discharge or acquittal of an accused the Court is of opinion that the charge was frivolous or vexatious the Court may order the complainant to pay to the accused a reasonable sum not exceeding 5 penalty units as compensation for the trouble and expense to which such person may have been put by reason of the charge.*

On the basis of the above provision of the law in section 141 of Act 30 supra, the complainant herein is ordered to pay compensation of the equivalent money of 5 penalty units ie GH¢ 60.00 to Accused person herein.

HH YAW POKU ACHAMPONG

CIRCUIT COURT JUDGE

18/10/2023