

SUIT NO. D2/207/2023

THE REPUBLIC

VRS

NICHOLAS ISSAH ATIVI @ MAWUTOR MAWULI

JUDGMENT

1. The accused was arraigned before this Court on 23 January 2023 on the charge of possession of firearms without proper authority contrary to sub-paragraphs (a) and (b) section 11 of the Arms and Ammunitions Act, 1972 (NRCD 9). From the particulars of the offence, it was alleged that the accused kept two (2) short guns in his room without proper authority. The case of the prosecution in fine was that officers of the Criminal Investigations Department of the Ghana Police

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Service found the two (2) firearms in the accused person's room when he had no proper authority to possess them. The accused did not deny that he had the firearms in his room. However, his case was that he was a lathe turner who had a testimonial as his apparent proper authority. Therefore, the issue before the Court is whether the accused had proper authority to possess the firearms in question.

2. To prove the allegations made against the accused the prosecutor called Detective Corporal James Younge of the Criminal Investigations Department (C.I.D) headquarters who testified that upon instructions from his superior to accompany other officers to the houses of some motor riders to ascertain whether they had documents covering their motorcycles, they accompanied the accused to his house. Upon entering the room of the accused, the witness told the Court he spotted two locally manufactured short guns on a table at the left corner of the accused person's room. He interrogated the accused to ascertain whether he had a licence for the guns and other offensive weapons found in his room. In answer, the accused told him he used the guns and other offensive weapons for prayers and admitted he had no licence covering the guns.

3. The investigator, Detective Lance Corporal Reuben Asamoah Frimpong testified that when the accused was referred to him for investigations, the accused admitted ownership of the guns and other offensive weapons. He further admitted that the guns were found in his room when he took officers there to get the documents covering his motorcycle. According to the investigator, his investigations confirmed the information received. Additionally, it revealed that the accused was a lathe turner who manufactured the two (2) locally manufactured guns in his machine shop.

4. In his defence, the accused testified that he was a lathe turner who lived at Odawna. He confirmed that he was indeed arrested by the police who asked for the documents covering his motorcycle. He further confirmed that the police took him to his house for the purpose of procuring the said documents and found a pistol in his room.

5. Before I proceed to deal with the issue before me, I wish to comment briefly on the charge preferred against the accused. Although reference to a statute under which an accused person is charged is not mandatory by the provisions of subsection (2) of

section 112 of the Criminal and Other Offences (Procedure) Act, 196 (Act 30), a reference made to an enactment must correspond with the allegations contained in the particulars of offence. In the instant case, the accused was charged under paragraphs (a) and (b) of section 11 of NRCD 9 reproduced hereunder:

“[w]here any firearms ... are without proper authority

(a) found in the possession of a person,

(b) kept in a place other than a public warehouse that person or occupier of that place, or the owner of that place or any person keeping them, commits an offence unless that person, occupier, or owner can prove that they were deposited there without the knowledge or consent of that person, occupier or owner.”

6. It is apparent from the above that two distinct offences are created in both paragraphs for which the accused could have been charged, firstly for being in possession of the firearm, and secondly, for keeping it in his room which is a place other than a public warehouse. However, the prosecution preferred to charge the accused under paragraph (a) as the particulars evince. It is therefore

irregular for the prosecution to include paragraph (b) in the statement of offence. But there is more.

7. It would be observed that section 11 does not stipulate the nature of the punishment to be imposed. Under that circumstance, the Court cannot consider such an offence as a second degree felony for purposes of punishment in accordance with subsection (3) of section 296 of Act 30 since section 11 of NRCD 9 does not declare the offence in question a felony. Therefore to determine the nature of the punishment to be imposed the prosecution must review the entire Act. If that had been done, it would have been clear to them that they should have added section 26 to the statement of offence since section 11 of NRCD 9 cannot be read in isolation. Additionally, it would have been clear that there must be a specific reference to any of the subsections under section 26 to assist the Court in the imposition of a sentence in accordance with the particulars of the offence should the Court convict the accused. There is the likelihood of confusion where no such reference is made and this would be shown presently.

8. Paragraph (a) of subsection 1 of section 26 provides that “[a]

person commits an offence and is liable on summary conviction to a fine

not exceeding one thousand penalty units or to a term of imprisonment not exceeding five years or to both the fine and imprisonment if that person contravenes a provision of this Act"

Paragraph (a) of

subsection 2 of section 26 further provides that *[a] person commits a misdemeanour if that person contravenes a provision of this Act ...*" Evidently, there are two punishment regimes under paragraph (a) of subsection (1) and paragraph (a) of subsection (2) both applicable to section 11 which stipulates that the possession of a firearm without proper authority is a criminal offence and therefore inferentially a violation of NRCD 9. The former expressly stipulates the punishment whilst the latter makes it a misdemeanour, the punishment for which by the combined effect of subsection (4) of section 296 and subsection (2) of section 297 of Act 30 is limited to a term of imprisonment not exceeding three (3) years, although the Court has the discretion to impose whatever fine it deems fit once it is not excessive. Since the prosecution failed to include either paragraph (a) of subsection (1) nor paragraph (a) of subsection (2) in the statement of offence, under what regime should the Court impose a punishment if the accused is convicted? I shall answer that question shortly but now to the issue before me.

9. From the tenor of section 11 of NRCD 9, to succeed in securing a conviction, the prosecution must prove beyond a reasonable doubt that the police found the firearms in the premises occupied or owned by the accused or that the accused kept the said firearms [On the burden of persuasion of the prosecution see: *Gligah & Atiso v. the Republic* [2010] SCGLR 870]. A successful discharge of that burden shifts the burden of proof on the accused to establish that he had proper authority to possess the firearms or that despite not having proper authority, the firearms were deposited in his premises without his knowledge or consent.

10. The evidence is without question that the odds and the evidence are stacked against the accused who has been established to be the occupant of the premises where the firearms were found. Additionally, he has claimed ownership of the firearms. It is therefore his duty, his burden, to dislodge the evidence presented by showing evidence of proper authority.

11. The procedure for securing proper authority to possess a firearm is stipulated in sections 1 and 2 of NRCD 9. Subsection (1) of section 1 of NRCD 9 provides that “[a] person who owns, possesses or controls

arms or ammunition shall apply to register those arms or ammunition at the nearest police station.”

12. Subsection (3) of section 2 of NRCD 9 provides that “[w]here an application for registration is duly submitted and the arms or ammunition are duly produced and inspected by the police, the police officer authorised to effect the registration shall register the arms or ammunition ...” Additionally, section 29 defines arms to include firearms. Thus, to discharge his burden to dislodge the evidence preferred against him by the prosecution, the accused must present evidence of registration of the firearms found in his possession.

13. To discharge this burden the accused suggested to the investigator on cross-examination that he has the authority to possess the firearms, a suggestion denied by the investigator. The accused further suggested to the investigator that he had a certificate as a lathe turner and presented a testimonial to the Court regarding an apprenticeship programme he completed in lathe turning. From sections 1 and 2 of NRCD 9 supra, the evidence required to discharge the burden on the accused is not a testimonial from an apprenticeship

programme but evidence of registration issued by the Ghana Police Service. But the accused had another line of defence.

14. Under cross-examination by the prosecutor, the accused testified that by reason of his job as a lathe turner, he did not need a licence to manufacture the firearms in his possession. That can only be the cherished misapprehension of the accused because under section 20 of NRCD 9 “*[t]he manufacture and the assembling of firearms ... are prohibited unless at arsenals established by government*” and unless the accused wishes to suggest [and he indeed did not and could not have] that his abode is an arsenal established by government, his being a lathe turner is completely irrelevant and scarcely discharges his burden.

15. Accordingly, I find that the accused person had in his possession firearms without proper authority. I, therefore, find the accused person guilty of the offence of possessing firearms without proper authority and convict him accordingly.

16. Regarding the proper sentencing regime to be applied, I am inclined to rely on subsection (1) of section 26 of NRCD 9 [since the

sentence to be imposed is not in excess of the sentence in subsection

(2) of the said provision] and hereby sentence the accused person to a fine of seven hundred (700) penalty units or in default, a term of three (3) years imprisonment with hard labour. The Director General of the Criminal Investigations Department of the Ghana Police Service is hereby ordered to detain the firearms in issue and dispose of same in accordance with the directives of the Honourable Minister for Interior and in accordance with subsection (2) of section 144 of Act 30 after the time limited for an appeal or where the accused files an appeal, after the appeal has been disposed of.

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JOJO AMOAH HAGAN
JUDGE, CIRCUIT COURT.