

THE CIRCUIT COURT HELD AT AKROPONG ON WEDNESDAY
20TH DAY OF MARCH, 2024 BEFORE H/H NANA ADWOA
SERWAA DUA-ADONTENG OFORI ESQ SITTING AS THE JUDGE

CASE NO. D3/04/2024

THE REPUBLIC

VRS

CHARLES KWADWO FOSU

FINAL JUDGEMENT

COUNT ONE

STATEMENT OF OFFENCE

Unlawful Entry: Contrary to Section 152 of the Criminal Offences Act 1960 (Act 29)

PARTICULARS OF OFFENCE

CHARLES KWADWO-FOSU: AGE 27, TILLER On the 12th May, 2022 at Kwadaso in Kumasi in the Ashanti Circuit and within the jurisdiction of this court, you unlawfully entered the room of Evans Sarfo and Samuel Gyimah with the intention of committing offence to wit "Robbery"

COUNT TWO

STATEMENT OF OFFENCE

Robbery contrary to section 149 of the Criminal Code, 1960 (Act 29)

PARTICULARS OF OFFENCE

CHARLES KWADWO-FOSU: AGE 27, TILLER On the 12th May, 2022 at about 12.30am at Kwadaso in the Kumasi in the Ashanti Circuit and within the jurisdiction of this court, and for the purpose of stealing from Evans Sarfo and Samuel Gyimah and with the intent to overcome the resistance of the said Evans Sarfo pulled a gun on them and succeeded to ransack their rooms and stole iPhone X5 valued Ghs5000, iPhone 6XX Max valued at GHs4,500 Infinix Mobile phone valued GHs3000 and cash of GHs500 all valued at GHs13,000, the property of Evans Sarfo and Samuel Gyimah.

FACTS

The first complainant, Evans Sarfo is a teacher and a relative of the owner of Hurdler Guest House located at Patasi Estate while the second complainant Samuel Gyimah is the manager of the said Guest House.

The first accused person Charles Kwadaso Fosu is 27 years old self acclaimed tiller and resides at Kwadaso. The suspect (deceased) Omar Issaka Muniru alias Tanguani is resident of Adankwame. On 12th May, 2022, at approximately 12.30am, the accused person and suspect and one other person now at large armed with a pistol scaled the fence wall and entered the compound of the Hurdlers Guest house at Patasi. They forced open the door to the guest house and started moving from room to room to rob the occupants and the complainants at the guest house. The accused person eventually found complainant Evans Sarfo sleeping in one of the rooms at the guest house. They proceeded to ransack the room and took his Iphone X5, infinix mobile phone and cask of Ghs500 as well as Iphone 6XX Max belonging to Samuel Gyimah. In the course of their illegal operations the Close Circuit Television camera at the guest house recorded their activities. The complainant reported the matter to the Suntreso police for investigation and the CCTV footage was retrieved and analyzed. Investigations revealed the identity of the accused persons who were on the police wanted list for similar offences within Kwadaso and its environs. On 26/08/2022, accused person Charles Kwadwo Fosu who was captured in the CCTV and went into hiding in Accra returned to Kumasi and with the assistance of one of the victims of the robberies he had committed, the accused person was arrested. Further investigations have revealed that between the months of April and May 2022, the accused person and his accomplices formed a syndicate

and committed a series of robberies within Kwadaso and Patasi and escaped to Accra. Akomadan and Afrancho to seek refuge. After the arrest to seek refuge. After the arrest of the first accused person, Omar Issaka Muniru alias Tanguani continued his robbery operation until he lost his life on 13/10/2022 when he engaged a police patrol team in a shoot-out at Adankwame on a robbery scene. The accused person was charged and put before the honorable court with offences stated in the charge sheet.

Before I proceed to analyze the case before this court, let me first comment on the charges against the accused person; unlawful entry and robbery. What is patently missing is a charge of conspiracy, given that the facts supporting the charges clearly refer to a second suspect, one Omar (now deceased) who allegedly played a significant role in both the unlawful entry and robbery charges.

PLEA

The Accused plea was taken in Twi Language after the court explained to the accused what the available pleas were and the respective consequences of each plea. He pleaded Not Guilty to both the charge of Unlawful Entry and Robbery.

APPLICABLE LAW

Section 23 (1) of the Criminal Offences Act of 1960, Act 29 as follows:

Where two or more persons agree to act together with a common purpose for or in committing or abetting a criminal offence whether with or without a previous concert or deliberation, each of them commits a conspiracy to commit or abet the criminal offence.

The case law on conspiracy has always been that proof of prior agreement by direct evidence is nearly impossible and that such an agreement is inferred from proven facts. **C. O. P. vrs Afari and Addo [1962]1 GLR 483.**

In **Mulcahy v. R (1868) L.R. 3 H.L. 306 at p. 317**, Willes J. thus expatiated the law on conspiracy:

“A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act, or to do a lawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself...”

The offence of conspiracy is committed “where two or more persons agree to act in committing or abetting a criminal offence whether with or without a previous concert or deliberation...”

The agreement to commit a crime is not always proved by direct evidence. It may be established by inferences from proven facts.

It is therefore mindboggling and completely shocking to this court that not only did the prosecution fail to reproduce Omar’s name on the charge sheet as a suspect, they more importantly failed to proffer any charges against him. I understand that from the facts Omar is apparently deceased. The facts did not indicate whether he died after the commencement of the case or before. In fact, if the facts are anything to go by, ‘Suspect Omar Issaka Muniru recently lost his life at a robbery scene’. Considering that the alleged offence of unlawful entry and robbery occurred as far back as May, 2022 but the matter commenced in May, 2023, reference to ‘recent’ indicates that Omar died after the case commenced in this court, in 2023. Again, considering that the fact Omar allegedly died at the hands of the police in a shoot-out, it is a wonder why the prosecution did not present any proof of death to corroborate their averments of Omar’s death. I am inclined to believe that, prosecution decided to pursue their ‘bird in hand’ who is the accused person herein and completely ignore the one in the bush, Omar and therefore understanding that they would need to substantiate their claim that Omar is deceased, they decided to simply not proffer any charges which will require any ‘extra burden on them’ in regard to Omar. I know the crime and offence (criminal law) falls under the personal legal jurisprudential area where representatives of the offender cannot be made to replace him in his absence. However, this does not preclude the prosecution from still proffering charges in the absence of an offender, when no proof of death has been presented to the court especially when the facts clearly indicate that charges should be proffered against him.

Regardless of the demise of Omar, assuming same is true, the accused herein could have been singularly charged for his part in the conspiracy as described by the facts.

In Teye alias Bardjo v. The Republic [1974] 2 G.L.R 438, C.A. it was held that although two or more persons who embark upon a joint criminal exercise would each be answerable for the acts done in pursuance of the joint enterprise including such acts as were incidental to and necessary for the achievement of the joint enterprise and were or ought to be in their contemplation at the time when they embarked on the exercise, yet where one of the participants took a different course or went beyond what has been agreed upon or was in their contemplation then he alone would be liable, the others being freed of liability for the consequence of his unauthorized acts.

I shall now proceed to take the charges as presented to this court.

In criminal trials the prosecution has the burden of proof of the charge(s) beyond reasonable doubt. However, when the burden of persuasion is on the accused person as to a fact the converse of which is essential to guilt, the accused is required only to raise a reasonable doubt. [See section 11 (3) and 13 of the Evidence Act, 1975 (NRCD 323)]

COUNT 1 - UNLAWFUL ENTRY

Accused person was first charged with unlawfully entering the room of Evans Sarfo, an occupant of Hurdlers guest house with the intention of robbing him.

Section 152 of Act 29

A person who unlawfully enters a building with the intention of committing a criminal offence in the building commits a second degree felony.

153. Explanation as to unlawful entry

A person unlawfully enters a building if that person enters otherwise than in the exercise of a lawful right, or by the consent of any other person able to give the consent for the purposes for which that person.

The prosecution's case is that on 12th May, 2024, the accused person and another scaled the fence of and entered Hurdlers guest house at midnight with the sole intention of robbing the guests of the facility.

The question before the court is whether the persons who entered the guest house did so unlawfully.

Ollenu JSC held in **Ababio II & Anor v Akro & Co [1963] 1GLR 195 @ 200**

“The duty of the courts is to decide a case upon the evidence before it..”.

Akuffo-Addo CJ later held in **Ashitey v Dodoo** (Judgment delivered on 15th August 1969) that:
“A successful investigation would necessarily involve a process of fact finding. One of the primary functions of a judge hearing a case at first instance is fact finding. A decision by a judge requires first, the sifting of the evidence bearing on the controversy, no matter how difficult the exercise may be in order to find out where truth lies between the conflicting versions pleaded before him.”

The prosecution tendered into evidence through the investigator pictures and CCTV footage of the accused person and another person being on the premises. Prosecution says the person in the video with his face covered by a mask is the accused person. The video shows the two men walking down a corridor with different doors and in the background, there is darkness outside. Prosecution relied on the video to corroborate their testimony that accused was at Hurdlers guest house unlawfully.

Can a person be said to have unlawfully entered a place, when the place is a public place, such as a guesthouse which is open to all and sundry at all times?

"Guest" means a person who is registered at a hotel and is assigned to transient lodging, and includes any individual accompanying the person.

Another definition on www.Lawfinder.com is that a “Hotel guest means a person whose name and address is registered on the registry maintained by the hotel and who is the bona fide occupant of a room of the hotel.”

The relationship between the hotel and the guest is governed by hospitality law, which emphasizes service, privacy, and transient use of the property

An invitee or licensee can instantly become a trespasser if — and only if — the hotel informs that person that he or she is no longer welcome on the premises. When a hotel decides it no longer

wants someone on its property, that person becomes a trespasser and the hotel can insist that he or she leave.

In considering whether the entry was unlawful I shall avert myself to the offence of unlawful entry contained in section 152 of Act 29.

Section 152 of Act 29 sets out two parts of the offence; which is (1) entering a building without permission from its owners and (2) being on the property to commit a criminal offence. This therefore means that merely being on a premises without consent is not sufficient to ground a charge under section 152 of Act 29, it may however be one of trespass under tort.

Prosecution must prove that the person on the premises, was also there to commit an offence. The offence of unlawful entry is thus not completed unless the prosecution proves the *mens rea* for the person's presence in the building.

As a general rule, for a person to be found guilty of a crime, their actions must coincide with a criminal intent, or *mens rea*. This requirement is reflected in the latin maxim *actus non facit reum nisi mens sit rea* which means "an act does not render a man guilty of a crime unless his mind is equally guilty".

There's no art to find the mind's construction in the face." This line is spoken by King Duncan in act 1, scene 4 of Shakespeare's Macbeth after he has been told that the Thane of Cawdor has been executed for his crimes of treason. This statement can be interpreted to mean that one cannot read someone else's mind by merely looking at their face.

If this is so, how can the presence of a person be considered unlawful, merely because he is in a building without permission of the owner of the building. The simple answer is, it is not unlawful. It may be a nuisance at best but not unlawful. Unless, it can be proven that after being on the premises without permission, the person also went ahead to commit a crime, attempted to commit a crime or even fathomed the idea of committing a crime. It is usually easy to ascertain what the intentions of the person, by how he entered the premises. He may go through unauthorized entrances or exits, or fashion himself an unauthorized entrance by breaking through some part of the building, or wield tools with which he could pry open locks or doors or

even a weapon to subdue anyone whom he may believe could thwart his plans. Hence, even if the person is not caught in the act of committing a crime while on the premises, the accoutrements found on his person when he is accosted or how he got onto the premises can found a suspicion of malicious intentions.

In this case, the prosecution did not want the mind of the court to go on a rollercoaster as to why the accused person was at Hurdlers guesthouse on 12th May, 2022 at 12.30am. The prosecution asked the court to watch CCTV footage from the guesthouse showing the accused person in the guesthouse at midnight.

Having watched the CCTV footage, I have no doubt that it is the accused person before the court who was in the video with another. I also find that the accused person was in the guest house late at night only to commit a crime.

I therefore have a strong inclination to rely on the CCTV footage which clearly shows the accused at the guest house and considering the darkness it in background of the video, it is reasonable to infer that at the time the accused was at the guest house, it was late at night. Quite impossibly, the mind of the accused cannot be seen in the video and hence it is the accumulation of those actions that he took when he was at the guest house; going from room to room at that time of the night, that allows me to firmly conclude that accused was at the guest house with criminal intents.

The courts on the burden of proof have held that *“Our law is that when a person is charged with a criminal offence it shall be the duty of the prosecution to prove his guilt beyond reasonable doubt, meaning the prosecution has the burden to lead sufficient admissible evidence such that on an assessment of the totality of the evidence adduced in court, including that led by the accused person, the court would believe beyond a reasonable doubt that the offence has been committed and that it is the accused who committed it. Apart from specific cases of strict liability offences, the general rule is that through out a criminal trial the burden of proving the guilt of the accused person remains with the prosecution. Therefore, though the accused person may testify and call witnesses to explain his side of the case where at the close of the case of the prosecution a prima facie case is made against him, he is generally not required by the law to prove anything. He is only to raise a reasonable doubt in the mind of the court as to the commission of the offence*

and his complicity in it except where he relies on a statutory or special defence. See Sections 11(2) 13(1), 15(1) of the Evidence Act, 1975 (NRCD 323) and COP v Antwi [1961] GLR 408.

However, beyond reasonable doubt does not mean beyond a shadow of doubt. The guilt of an accused person is sufficiently proved if the tribunal of fact is convinced that he committed the offence though there remains a lingering possibility that he is not guilty. See Oteng v The State [1966] GLR 352."

I find that the investigator's testimony as well as the CCTV footage is conclusive proof that the accused went to Hurdlers guest house without authorization and with the sole intention to rob its occupants. I therefore find the accused Guilty of Unlawful Entry and convict him of the offence accordingly.

COUNT 2 - ROBBERY

It is the additional case of the prosecution against the accused that he, accused robbed complainants, guests of Hurdlers guest house at gun point of their mobile phones and money.

Section 150 of the Criminal Offences Act of 1960 [Act 29] which states that:

"A person who steals a thin commits robbery.

(a) if, in and for the purpose of stealing the thing, that person uses force or causes harm to any other person; or

(b) if that person uses a threat or criminal assault or harm to any person, with intent to prevent or overcome the resistance of the other person to the stealing of the thing."

To ascertain whether or not accused did indeed commit the offence of robbery, I shall refer to the case of **Kwaku Frimpong @ Iboman Vs Republic [2012] I SCGLR 297** where the court explained that for a charge of robbery to hold, the prosecution has to prove the following:

1. The accused stole something from the victim of the offence
2. In stealing the thing the accused used force, harm or criminal assault or threat thereof
3. The intention of doing so was to prevent or overcome any resistance.

4. The fear of the violence by the victim must be personal to himself or someone in the room.
5. The theft must have been in the presence of the person threatened.

Animus furandi which is a prerequisite to all charges involving stealing.

Behome Vs. the Republic [1978] DLHC1133

The essence of robbery is the taking of property by violence or by threat of violence to a person with the intent that the resistance of that person or any other person will be prevented or overcome to the stealing of the thing. A mere idle show or threat of violence excited can hardly satisfy the test. It is, however, enough if money is demanded and the fact be attended with such circumstances of violence or threats, as, in common experience, are likely to create an apprehension of danger and induce a person or a member of his family to part with the money.

From the authorities explaining robbery at common law (upon whose principles section 150 of Act 29 is framed) the fear may be either of personal violence to the person robbed, or to a member of his family: see *R. v. Donnally* (1779) 1 Leach 193. Family here is, of course, applied in the restrictive sense of a man, his wife and children. Again, the thing stolen must be from the person of the one threatened, or in his presence, if the property is under his immediate and personal care and protection: see *R. v. Fallows* (1832) 5 C. & P. 508 and *R. v. Selway and Wynn* (1859) 8 Cox C.C. 235. *Reane's case* (1794) 2 Leach 616 went on the principle that in a crime of robbery the property must be parted with from an immediate apprehension of present danger.

PROSECUTION'S CASE

The investigator testified for the prosecution. Neither of the complainants were called by prosecution to testify.

It was the investigator's testimony that the complainant made a complaint to the police about a robbery incident which occurred at Hurdlers guest house on 12th May, 2022 with the robbers making away mobile phones and cash of Ghs500. He said Suntreso police immediately noticed the suspects of the crime were wanted persons on their criminal wanted list. Coincidentally, the

accused was arrested by one of the victims in another robbery and when he was brought to the Suntreso police station, the complainant identified him as the person who robbed him at Hurdlers guest house at gun point and took away his belongings.

The prosecution invited the court to rely on the CCTV footage which showed the accused on the Hurdlers guest house premises. As earlier found, the court believes the accused was unlawfully in the building. However, without the testimony of any complainant that indeed the accused took their belongings, and without the CCTV footage showing the accused being in the complainant's room, it is nearly impossible to conclude that even if the accused was in the building to rob, he did in fact rob the complainants. I have no doubt in my mind that accused and his accomplice were in the building to rob and may have succeeded to do so, the question I do not have answered from prosecution's evidence is whether these particular complainants were robbed.

Can robbery be a victimless crime? Can there be said to be a robbery, if no one is found to have been robbed, even if items are missing?

I am very mindful of the direction of Devlin J. (as he then was) in **R. vs Atter**, (The Times, 22 March 1956) that:

"Where one has a case where the evidence is purely circumstantial, then I must satisfy myself, in my judgment, that there is some piece of evidence that is more than mere suspicion, that there is some piece of evidence which would justify in saying that points to the accused."

I find that the prosecution presented a credible witness and therefore the prosecution was able to establish a prima facie case against the accused and the accused was to open his defence.

Accused's Case

The accused testified on oath from the witness box. It was the accused's defence that this case is an unfortunate case of mistaken identity in which luck had eluded him. He says he had no idea who the complainant was and did not know him from Adam. He insisted he was Charles Kwadwo Fosu and that was the name he was known by. He testified that Tanguani was completely unknown to him and that for years he had relocated to Accra to work with his brother

as a tiler. On the day of the said robbery, he said he was in Accra working and was with his wife and child. He insisted that if he had stolen any property from the complainant, the property should have been found on him when he was arrested and the fact that it was not indicates his innocence. He again challenged the confession statement claiming he was brutally assaulted by the crime officer to confess to the robbery.

Mini Trial

The accused was adamant and maintained his innocence throughout the entirety of the trial. During prosecution's case, he challenged the admissibility of the confession statement put forth by the prosecution.

The accused person raised an objection to the tendering of the investigation caution statement which the prosecution intended to rely on as confession statement obtained from him during the course of investigation to the effect that the statement was not obtained voluntarily, i.e. that he was beaten by the crime officer at Suntreso police station to confess to the crime. The court on the back of the objection set down for trial to ascertain whether or not the confession statement was obtained voluntarily and therefore admissible.

Section 120 of the Evidence Act, 1975 Act 323 requires that as a general rule, a confession by an accused made outside of the court is hearsay and therefore inadmissible evidence unless same was made voluntarily and while arrested or detained, in the presence of an independent witness.

In **Duah v the Republic [1987-88] 1GLR 343**, the Court held that confession statement will be inadmissible if found to have been made involuntarily.

In **State v Banful (1965) GLR 433** which is relevant to this case, the Supreme Court determined that where the confession was given under duress exerted by or at the instance of a public official, the statement given was inadmissible.

During the mini trial, the prosecution called to testify the independent witness whose testimony was that she is a community police attached to the Suntreso police and was invited to be present while the accused's statement was taken. She said she thereafter explained the reason why the

statement was being taken to the accused, whereafter he made the confession in Twi and same was interpreted to him after being reproduced in English. The independent witness testified that during the witnessing of the statement taking she did not see any marks, bruises or physical indications on the body or movement of the accused to show that he had been abused. She said he was articulate when giving his confession and seemed to understand same well when she explained what had been reproduced in English to him. The prosecution also called the Crime officer of Suntreso police, against whom the accused made the allegations of abuse. The crime officer denied any abuse against the accused and testified that when he was invited to have his statement taken, accused already had some bruises on his face and he accused confessed that he was beaten by some of the cell mates. The crime officer denied any conduct of abuse citing that he was aware that any statement taken under duress or abuse was inadmissible and would defeat the purpose of taking the statement.

The accused on the other hand was very insistent that the criminal and the station officer called him to the crime officer's office and when he got there, they used a computer cable to beat him mercilessly causing bruises all over his body. He says the bruises were so gory that he feared he might die if he did not confess to the robbery. He described being hit at his back with the cable wire causing marks all over the back of his body. Accused called his mother and brother to testify to the abuse he suffered while detained. His mother's testimony was that, when she visited the accused after his arrest, he was completely covered in blood and had a big bruise on his head. She said she did not see any bruises on any other part of his body but his head and his face. Accused's brother also testified that he was called that accused had been arrested but he could not immediately go to the police station to see him. He admitted that when he did go, he did not see any bruises on the accused but realized he looked tired. He further testified that he did not see any blood on the accused or marks to show abuse by any person.

At the end of the mini trial, on the totality of the evidence provided to the court by the prosecution and the accused, the court found that the prosecution witnesses were credible and the evidence they had submitted to the court established that there was no abuse by the crime officer at the

time the accused's statement was being taken. The court therefore ruled that the confession statement was admissible and accepted it into evidence.

Alibi

It is clear from the testimony of accused that he intended to rely on the defence of alibi but he seems to have held unto that as though he wanted to spring on the prosecution as a surprise when called upon to put forward his defence. Accused did not make any reference to being else located the entire time during the trial until he was called upon to open his defence. The court is guided that being self-represented, accused would not have been well-tutored on the procedure for trial and may have assumed he could only say so when called upon to speak. The records show that on several occasions, accused was advised and directed to seek legal help if he so minded and if he could not afford to do so, could call on Legal Aid Services for free legal services particularly giving the severity of charges he was facing. To prove his alibi, even though he did not file any Notice of Alibi, accused called to testify his wife, DW2, with whom he claimed he lived in Accra. It was the testimony of the wife that she lived in Accra with accused in 2022 after she delivered and had lived with him throughout without leaving Accra. She said she was very certain accused was not in Kumasi on 12th May, 2022 because he was with her in Accra celebrating her birthday and they went to Accra mall. Although DW2 said she had pictures to show that she went to Accra mall with accused on her birthday, she did not provide any of the pictures to the court. She continued that she and accused came to Kumasi in August, 2022 for a funeral but at all times she was always with accused. During cross-examination DW2, admitted that accused sometimes went to work outside of Accra and did not always know where exactly he went to work when he left Accra.

DW3 was accused's brother with whom he said he worked as a tiller. DW3 tendered into evidence pictures of accused at different work sites to show that he was in Accra. DW3 admitted during cross-examination that he had no knowledge of the robbery case except what he had been told but insisted accused was supposed to be with him in Accra during the time the robbery occurred and he was shocked to find out he had abruptly travelled to Kumasi despite he, DW3 cautioning

him not to go. The pictures tendered by DW3 depicted accused working at different places but there was no timeline provided to the court when the pictures were taking. They could very well have been taking long before 2022 or indeed in May, 2022. There was no way for the court to determine this because the pictures showed no evidence of location or time.

In the *Iboman's case (supra)* the test of robbery is provided as follows;

1. The accused stole something from the victim of the offence
2. In stealing the thing the accused used force, harm or criminal assault or threat thereof
3. The intention of doing so was to prevent or overcome any resistance.
4. The fear of the violence by the victim must be personal to himself or someone in the room.
5. The theft must have been in the presence of the person threatened.

At the end of the prosecution's case, upon analyzing the testimony of the prosecution witness, I find that the prosecution did not present any victim to the court from whom the accused stole any property.

Therefore, regardless of how credible I found their witness's testimony, they did not prove all the requisite ingredients for the court to find the accused guilty of the offence of robbery.

I therefore find the accused Not Guilty of the offence of Robbery as charged and Acquit and Discharge him thereof.

When the accused was asked by the court to allocute, he said

"In all evidence by the prosecution they mentioned the names of the people who committed the robbery. The video that was played in the court those people names were mentioned. I have no knowledge of what they are talking about."

SENTENCING

In the case of Kwashie v the Republic [1971] 1 GLR 488-496 where it was held that

In determining the length of sentence, the factors which the trial judge is entitled to consider are: (1) the intrinsic seriousness of the offence (2) the degree of revulsion felt by law-abiding citizens of the society for the particular crime; (3) the premeditation with which the criminal plan was executed; (4) the prevalence of the crime within the particular locality where the offence took place; or in the country generally; (5) the sudden increase in the incidence of the particular crime; and (6) mitigating or aggravating circumstances such as extreme youth, good character and the violent manner in which the offence was committed."

In the case of Frimpong alias Iboman v Republic [2012] I SCGLR 297, at pages 329 – 331 as follows:-

What is to be noted here is that, whilst the minimum sentence for robbery has been fixed at 10 years simpliciter, in cases where offensive weapons have been used, the legislature has deemed it fit and proper to enhance the minimum to 15 years imprisonment. Being a first-degree felony means that the legislature has categorized the offence of robbery as a grave one. The maximum sentence can therefore be any number of years that a court deems suitable and appropriate under the circumstances unless the statute states otherwise.

Prior Conviction

Prosecution submitted to the court that the accused was convicted on 3/08/2016 by another Circuit court for stealing and sentenced to pay a fine of Ghs600. Prosecution could not present any proof to the court that the Ghs600 had been paid by the accused. Accused voluntarily informed the court he fully paid the Ghs600 to the circuit court.

Aggravating and Mitigation Factors

Section 152 of Act 29 places Unlawful Entry as a second-degree felony.

Were there any security measures put in place to prevent the offence from occurring i.e. was there a gate, fence wall, electric razor wire, CCTV – yes, all those things were installed by Hurdlers guest house and that is what the CCTV captured.

Previous conviction – yes, the accused paid a fine to the Circuit Court meaning that the sentence was served, therefore by reason of Section 300 of Act 30, the court could enhance his sentence.

There was no recorded injury caused to anyone from the commission of the crime.

The value of damaged caused to property by the unlawful entry was not presented to the court. This leaves the court to conclude, there is none or minimal damage to property.

Section 296 of Act 30 provides that when a charging section of an Act does not make provision for a maximum sentence to be imposed for a second-degree felony, the court cannot impose a sentence beyond 10 years. The accused is therefore sentenced to 10 years for the offence of Unlawful Entry.

NANA ADWOA SERWAA DUA-ADONTENG OFORI, ESQ
CIRCUIT COURT - AKROPONG