

IN THE CIRCUIT COURT HELD AT GOASO IN THE AHAFO REGION ON FRIDAY  
THE 9<sup>TH</sup> DAY OF FEBRUARY 2024 BEFORE HIS  
HONOUR CHARLES KWASI ACHEAMPONG ESQ. CIRCUIT COURT JUDGE

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BR/SY/CT/468/2023

THE REPUBLIC

VRS.

ISAAC BOAKYE

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### JUDGMENT

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Prosecution by its facts indicate that on the 9<sup>th</sup> of May 2022 at about 12 midnight while a joint team of security officials of the complainant company and the police were on usual patrol within the concession of the complainant company, the team chanced upon the accused person together with other persons described in the facts as „galamseyers“ which is a colloquial term used to describe persons engaged in illegal mining. Accused person was arrested but his cohorts managed to escape. Prosecution alleged that the team found at the scene an explosive, two detonating cord and a torch light. Consequently, accused person was charged with the offences of being on premises for unlawful purpose, preparation to commit crime to wit illegal mining and possession of explosives without authority. However, in the course of trial Prosecution opted to withdraw the charge

relating to possession of explosives and insisted to prosecute accused person on the first two charges.

Accused person having been arraigned before the Court on the 11<sup>th</sup> of May 2022 pleaded not guilty to the charges however trial did not commence until the 2<sup>nd</sup> of June 2023. From the records, the cause of this inordinate delay was largely due to unavailability of Prosecution's witnesses and the failure of Prosecution to procure accused person to court during hearing days. Various reasons were advocated by Prosecution for this anomaly. However, this conduct must be decried in no uncertain terms as it literally infringes upon the right of the accused person in the prosecution of his case.

Given the fact that accused person denied the offences against him, the onus fell upon Prosecution to establish its case against accused person beyond reasonable doubt in accordance with **Section 11(2) of the**

**Evidence Act 1975 (NRCD 323)** which provides;

**“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.”**

In this case, accused person is first charged with the offence of being on premises for unlawful purpose contrary to section 155(1) of Act 29/1960 which provides that, **“a person who is found in or about a market, wharf, jetty, or landing place, or in or about a vessel, verandah, outhouse, building, premises, passage, gateway, yard, garden or an enclosed piece of land, for any unlawful purpose, shall be guilty of a misdemeanour”**. Consequently, the elements which need proof are;

- a. That the accused person was found in any of the premises as described in section 155;
- b. That the accused person was in the premises for an unlawful purpose.

The first issue therefore is to determine whether or not accused person was found within the premises of complainant and in this regard, Ebenezer Boahen (Pw1) testified to the effect that on the day of the incident at about 1:30 am they found accused person within the concession of the complainant company. Even though accused person did not directly challenge Pw1 as to whether he was found within the concession of the complainant company, this issue came up during the course of Pw1's cross examination when accused person questioned him as follows; Q. I do not mine illegally. I am only a farmer?

A. Not true. You were arrested within the Awonsu in-pit on Newmont's concession.

Q. I do not know the said Awonsu in-pit you are mentioning?

A. Awonsu in-pit is the name Newmont refers to the place you were arrested.

From the above discourse, one observes that accused person appears to concede that he was arrested within the complainant company's concession, just that he was not aware that the place was referred to as Awonsu in-pit. This testimony was corroborated by Paul Kesseh (Pw2) in his evidence in chief and likewise accused person did not challenge the fact that he was found within the concession of the complainant company. Accused is therefore deemed to have admitted the truth of that fact. (See: Republic vrs. Kwame Amponsah & 6 ORS (2019) JELR 107122). This Court thus finds that Accused person was found within the concession of the Complainant Company. The question however is whether or not a concession is premises within the meaning of the law?

The term „Premises“ within the meaning of the section 155 means, **“market, wharf, jetty, or landing place, or in or about a vessel, verandah, outhouse, building, premises, passage, gateway, yard, garden or an enclosed piece of land...”** and further states “for the purposes of this section the expression **„enclosed piece of land“** shall be construed as including any piece of land of any of the following descriptions – (a) land in respect of which a concession...is for the time being in force...”

Section 49 of the Concessions Act, 1939 (Cap. 136) explains concession to mean “an instrument by which a right, title, or an interest in or to land, or in or to minerals, timber, rubber, or any other products of the soil in or growing on a land or the option of acquiring that right, title or interest purports to be granted or demised by a citizen ...”

The combined meaning of the above provisions is that, any land which falls within a concession (as above defined), must be construed as an enclosed piece of land and therefore must be considered as being a „premises“ within the meaning of section 155 and as such concession of a mining company is the premises of the company.

With that determined the next issue is to ascertain whether accused person was within the premises for an unlawful purpose. Any conduct which is not in accord with the law can be described as unlawful and if one has an intent to commit same, it can be concluded that the person had an unlawful purpose. In this case accused person is alleged to have been found in the premises of complainant with the intent to mine illegally. According to Pw1 and Pw2 in furtherance of this purpose, accused person had in his possession explosive materials and a torch light. Accused person challenged both witnesses alleging that he never had the said items in his possession but rather had a phone and a cutlass since he was a farmer and had gone to his okra farm. Thus, the onus to establish the purpose of accused person’s presence at the site had not been discharged by Prosecution. This burden could very well be discharged by Prosecution establishing that accused

person had explosives in his possession. This is due to the fact that, the presence of explosives is clearly indicative of an intent to commit some form of crime especially if the person in possession of such explosives has no reasonable explanation for having same in his possession. Consequently, Pw3 testified to the effect that an explosive and two detonators were given to him in the course of investigations and alleged that same were found in the possession of accused person. Pw3 however, did not tender the said explosives nor the detonators he rather alleged that he had sent same for forensic testing. The closest he came to proving the presence of explosives was his tendering of a picture which depicted accused person with his hand behind him and a sack in front of him. On top of the sack can be seen a torch light, a yellow cord and a white item. The picture was tendered and marked as Exhibit C. Exhibit C however, in the view of the Court, does not establish that accused person was in possession of explosives. This Court cannot determine whether the cord and the white item were the explosive and detonators by merely looking at the picture. In fact, even if the said items had been tendered physically in Court, the Court would not be in a position to ascertain its nature and character except a forensic analysis is done on same and a report duly tendered into evidence. Unfortunately, no such forensic report was procured by Prosecution and as such the Court is unable to find that explosives were found in the possession of accused person.

Exhibit C however tends to corroborate the statement accused person gave to the Police while in custody. These statements were accused person's Caution and Charge Statements which were marked as Exhibits A and B respectively. According Exhibits A and B, accused person indicates that he went to the site in question to pick up suspected gold bearing materials but while doing so, a blast went off and subsequently the patrol team came to the scene and caused his arrest. If accused person indeed went to the site to pick gold bearing materials, he would certainly have had in his possession a sack into which he would have placed the rocks he would have collected. Again, given the time he

left for his escaped, having a torch in his possession was certainly not out of place. On his part Accused person in his Defence alleged that he was on his way to his okra farm to lay ambush for people who had been stealing his produce when he was arrested in the process. This contention however does not support accused person's statement given by him on the 9<sup>th</sup> and 10<sup>th</sup> of May 2022 as per Exhibits A and B. This Court is more inclined to believe his assertions in the said statements given the fact that accused person gave the said statements very close in time to the day of the incident while his memory was still fresh as to the happenings on the day of the event. Moreover, Exhibits A and B were tendered without any objection by accused person. This Court accordingly finds that accused person was not only found within the premises of the complainant company but his purpose for being there was to pick gold bearing materials. Clearly, this conduct of accused person was done without the express permission of the complainant company and as such accused person's reason for being within the premises of complainant company was for an unlawful purpose. Count One is therefore established beyond reasonable doubt. Accused person is accordingly found guilty on Count One and hereby convicted.

The next charge preferred against accused person is the offence of preparation to commit crime to wit illegal mining contrary to section 19 of Act 29/196 and Section 99(2) of Act 702/2006.

Section 19 of Act 29/1960 provides;

“Every person who prepares or supplies, or has in his possession, custody, or control, or in the possession, custody or control of any other person on his behalf, any instruments, materials, or means, with the intent that the instruments, materials, or means, may be used by him, or by any other person, in committing any crime by which life is likely to be endangered, or any forgery, or any felony

shall be liable to punishment in like manner as if he had attempted to commit that crime.”

Hence the elements of the offence are that;

The accused person must;

- i. The accused person must have in his possession custody or control any instruments, materials, or means;
- ii. The accused person must have the intent of using the

instruments, materials, or means to commit any crime; and

- iii. The crime in question must be one which life is likely to be endangered, or any forgery, or any felony.

Consequently, it must first be ascertained if accused person had in his possession any instrument, materials or means which were intended to be used to carry out a crime. In this case, from the particulars of offence, Prosecution alleged that an explosive and two detonating cords were found in the possession of accused person. All the witnesses of Prosecution repeated this assertion thereby corroborating each other and accused person consistently denied same. Given the nature of the items in question, the only means by which one can determine conclusively whether in fact they were indeed an explosive and detonating cords is by forensic evidence, unfortunately Prosecution did everything but proffer such evidence. This Court is therefore not in a position to confirm whether indeed, an explosive and detonating cords were found in possession of accused person. Thus, it cannot be the case that accused person was preparing to mine illegally. However, by Exhibit C, there is in doubt that in the very least accused person had in his possession a sack and a torch light. Furthermore, the evidence suggest that he was arrested between

the hours of 12 midnight and 1:30am and he was found within the premises of the complainant company. Why did he have these items in his possession and for what purpose? This was answered by accused person in Exhibits A and B to the effect that he went there to pick gold bearing materials. These gold bearing materials belonged to the complainant company and if accused person went there to obtain same without the requisite permission, he was obviously at the site to commit the offence of stealing and not mining illegally. Unfortunately, since the charge preferred against accused person is not the crime of preparing to steal this Court cannot substitute same for that proffered by Prosecution as same fails to meet the requirement of the law in accordance with section 154 of Act 30/1960.

Consequently, accused person is acquitted and discharged on Count Two

(2).

In sentencing accused person on Count One, this Court is mindful of the fact that that offence is a misdemeanour and accused person has been in custody since the inception of this suit, that is the 11<sup>th</sup> of May 2022. Consequently, this Court deems it just not to impose a purely custodial sentence. Accused person is therefore sentenced to serve a term of imprisonment of 7 days in hard labour. Accused person shall further sign a bond to be of good behaviour of a period of 3 months and in default 6 months imprisonment in hard labour. The items retrieved, that is the sack, torch light and purported explosives and detonating cords shall be destroyed by the Police under the supervision of the Registrar.

**SGD**  
**H/H CHARLES KWASI ACHEAMPONG ESQ.**  
**CIRCUIT COURT JUDGE - GOASO**



