

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

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BR/SY/CT/292/2022

THE REPUBLIC

VRS.

ISAAC KWALLAH

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JUDGMENT

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It is alleged by Prosecution that on the 23<sup>rd</sup> of January 2022 at about 9:00pm a patrol team of Newmont Ghana Limited was on normal patrol duties when they spotted accused person within the concession of company. When questioned, accused person gave no tangible answer for his presence there, hence he was arrested and charged with the present offence.

Given the fact that accused person denied the offence preferred 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 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, Samuel Nsowah (Pw1) testified to the effect that on the 23<sup>rd</sup> of January 2022 at about 9:20pm he was part of a patrol team which embarked upon patrol duties within the concession of Newmont Ghana Limited. He alleged that when they got to a place called Camp B site, they found accused person engaged in mining. Accused person sought to challenge Pw1’s assertions by questioning him as follows;

Q. I was not engaged in illegal mining?

A. You were digging the ground when we met you. Your partner managed to abscond but you were arrested.

Q. I was there to work on a cocoa farm?

A. Not true. Where you were arrested was in the mines.

From the foregoing questions, one observes that Accused person did not seem to dispute or deny the fact that he was found at a place known and called Camp B site. He was rather focused on the alleged purpose for his presence at that site. Given this apparent admission, accused person is deemed to have admitted the fact that he was found at Camp B and I so hold.

Where is Camp B? According to the testimonies of Prosecution's witnesses, Camp B fell within the concession of the complainant company. This was first alluded to by Pw1 and corroborated by Boahen Ebenezer (Pw2) in their respective evidence in chief, yet accused person failed to deny same by all the means available to him. He is again deemed to have admitted the truth of that fact.

(See: Republic vrs. Kwame Amponsah & 6 ORS (2019) JELR 107122). Consequently, it is the finding of the Court that Camp B is within the concession of complainant company and 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 the concession of a mining company is the premises of the company. It follows therefore that the accused person was found within the premises of Complainant company.

The above finding alone does not however found a conviction. A conviction can only be attained where Prosecution further establishes that the accused person was in the premises for an unlawful purpose. It was thus no wonder that Prosecution sought to allege that the purpose for accused person’s presence within the concession of the complainant was that he was engaged in illegal mining. This is gleaned from the testimonies of Pw1 and Pw2. Accused on his part denied the assertion that he was engaged in illegal mining. As observed from the cross examination of Pw1. With regards to Pw2 accused person questioned as follows;

Q. I put it to you that I was not engaged in illegal mining. I am a Farmer?

A. Not true.

Since accused person had denied Prosecution’s contention, it behooved upon Prosecution to lead evidence to corroborate its contention that accused person was at the site engaged in illegal mining. They attempted to do so by tendering a picture of accused person with his hand behind him sitting on a rock. The picture was tendered and marked as Exhibit C. This picture however fell short of proving its contention. No other evidence was proffered by Prosecution to

confirm or corroborate their assertion. This Court therefore finds same unproven.

It is interesting to note that, the allegation of illegal mining having been engaged in by the accused person was apparently an afterthought. This is perceived from the charge sheet particularly the particulars of offence which reads;

“Isaac Kwallah...on 23/01/2022 at about 9:00pm Ntotroso in the Ahafo Circuit and within the jurisdiction of this Court, you entered the premises of Newmont Ghana Gold Limited Camp B site for unlawful purpose with intent to commit crime to wit: Stealing”

From the above, one observes that the unlawful act complained of is stealing and not illegal mining. All prosecution had to prove was to show that accused person was there to steal and lead evidence to that effect. Strangely they decided to prove that accused person was rather engaged in illegal mining which they woefully failed to discharge. It seems to me that, had Prosecution, attempted to establish the alleged stealing, it might have found it a bit easier to prove than the albatross it decided to hang around its neck.

Flowing from the above findings, it is the considered view of the Court that Prosecution failed to prove the second element of the offence and as such its case must fail. Accused person is accordingly acquitted and discharged of the offence.

It must however be noted that the charge of being on premises for unlawful purpose which is contrary to section 155(1) of Act 29/1960 does not require Prosecution to establish a crime. The words „any unlawful purpose“ found in the provision merely relates to the intent of the accused person. It must be proved that his presence at the place where he is found is for no lawful purpose,

that is any activity that is not sanctioned by law however that activity need not be classified as a crime. However, "...the thought of man is not triable, for even the devil does not know what the thought of man is..." (See: Brogden vrs. Metropolitan Railway Company [1893]1 Q.B 256). Thus the intent of an accused person can only be ascertained from the circumstances surrounding the case. Thus Prosecution ought to lead evidence which suggests an ill-intent on the part of the accused person.

When Prosecution however decides to specify the unlawful purpose in the charge sheet as in this case, it assumes an unnecessary burden to prove another crime beyond reasonable doubt which they failed to do in this case. Moving forward, Prosecution would do well to ensure that in order not to assume a burden too onerous, the particulars of offence in charges of this nature should simply state that the accused person was found in the premises for an unlawful purpose simpliciter.

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