

**IN THE CIRCUIT COURT “A”, TEMA, HELD ON THURSDAY, THE 25<sup>TH</sup>  
DAY OF JANUARY, 2024, BEFORE HER HONOUR AGNES OPOKU-  
BARNIEH, CIRCUIT COURT JUDGE**

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**SUIT NO: D18/19/19**

**THE REPUBLIC**

**VRS:**

**KWABENA BOAKYE**

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**ACCUSED PERSON**

**PRESENT**

**D.S.P. STELLA NASUMONG FOR PROSECUTION   PRESENT**

**SHAHADU MOHAMMED, ESQ. FOR THE ACCUSED PERSON PRESENT**

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**RULING ON SUBMISSION OF NO CASE**

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**FACTS:**

The accused person was charged and arraigned before this court based on the advice of the Attorney-General on the following charges;

1. Dangerous Driving contrary to **Section 1** of the Road Traffic Act, 2008 (Act 683) as amended by the Road Traffic Amended Act, 2008 (Act 761)
2. Negligently Causing Harm Contrary to **Section 72** of the Criminal Offences Act, 1960(Act 29).

The brief facts presented by the prosecution are that on 11<sup>th</sup> February 2017, between the hours of 5:00 pm and 6:00 pm, the accused person was in charge of a Mercedes Benz 4x4 vehicle with registration number *GR 3388-17* with one Tony Loku as a passenger on board driving along the Tema-Sakumono beach road heading towards Sakumono direction. The accused person allegedly overtook a queue of vehicles on the oncoming lane after Community 3 traffic. The prosecution argues that the accused person drove in a dangerous manner that would have been obvious to any competent

and careful driver. As a result, the accused person collided with a Royal motorbike, which had the registration number M-11-GT 4138. The motorbike was being ridden by Tamimu Saka, a 43-year-old who was traveling in the oncoming lane towards Tema intersection. The motor rider was seriously injured and taken to Tema General Hospital for treatment, but unfortunately, he pronounced dead on arrival. The incident was reported to the Police, who conducted investigations by visiting the accident scene, taking measurements, and drawing a sketch. The two vehicles involved in the accident were examined by a Technical Engineer from the Driver and Vehicle Licensing Authority (DVLA), who submitted a report. When investigations into the case were concluded, a duplicate docket was prepared and sent to the Attorney General's office, Accra, for advice. On receipt of the advice, the accused person was charged with the offences to appear before court.

### **THE PLEA**

After the charge had been read and explained to the accused person who was represented by Counsel in the Twi Language, they pleaded not guilty to the charges. As a result, the onus was on the prosecution to prove the accused person's guilt on the two counts, beyond reasonable doubt. During the trial, the prosecution presented two witnesses and tendered in evidence the following documentary evidence as exhibits.

**Exhibit “A”:** The Coroner’s Report

**Exhibit “B”:** Investigation Caution statement of the accused person.

**Exhibit “C” Series;** Photographs of the accident vehicle and the motorbike.

**Exhibit “D”:** Sketch of the Scene of Crime

**Exhibit “E”:** Police Accident request to the DVLA and the report from DVLA.

**Exhibit “F”:** Charge statement of the accused person

At the close of the case for the prosecution, Counsel for the accused person submitted that the prosecution had failed to make a sufficient case to warrant calling on the

accused person to open his defence and filed a written submission of no case on 24<sup>th</sup> January 2024 and the court has duly considered same.

### **THE LAW GOVERNING SUBMISSION OF NO CASE**

It is trite learning that in criminal cases, the accused person has no obligation to prove his innocence and that the onus is on his accusers to prove his guilt beyond reasonable doubt by adducing cogent and admissible evidence. Therefore, the accused person is required to state his side of the story only when at the close of the case for the prosecution, the court determines that a prima facie case is sufficiently made out requiring him to open his defence. Where there is no case sufficiently made out, the law permits an accused person to submit that there is no case for him to answer. This principle of law is given statutory backing under **Section 173** of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30), which states that:

*"Where 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."*

The principles governing a submission that there is no case to answer as gleaned from decided cases were re-stated by the Supreme Court in the case of **Michael Asamoah & Another v The Republic**, Suit No. J3/4/2017, dated 20<sup>th</sup> July, 2017, the Supreme Court, per Adinyira JSC (as she then was), at page 5 as follows:

*"The underlying factor behind the principle of submission of no case is that an accused should be relieved of defending himself where there is no evidence upon which he may be convicted. The grounds upon which a trial court may uphold a submission of no case as enunciated in many landmark cases whether under summary trial or trial on indictment may be restated as follows:*

- a. There has been no evidence to prove an essential element in the crime;*

- b. *The evidence adduced by the prosecution has been so discredited as a result of cross-examination; or*
- c. *The evidence was so manifestly unreliable that no reasonable tribunal could safely convict on it;*
- d. *The evidence was evenly balanced in the sense that it was susceptible to two likely explanations, one consistent with guilt, and one with innocence".*

In the case of **Tsatsu Tsikata v. The Republic [2003-2004]** 1 SCGLR 1068, the Supreme Court stated that the standard of proof at this stage is a prima facie case in contradistinction to beyond reasonable doubt since the defence has not had the full opportunity of punching holes in the case of the prosecution. **Section 19** of the Evidence Act 1975, (NRCD 323) states that an enactment providing that a fact or group of facts is prima facie evidence of another fact creates a rebuttable presumption. The term "*prima facie*" evidence has been defined in case law to mean evidence which on the face of it or the first appearance could lead to a conviction if the accused person fails to give a reasonable explanation to rebut it. Meaning, that the prosecution should at this stage lead evidence to establish the essential ingredients of the offence charged such as would lead to a conviction if the accused person fails to open his defence to offer an explanation to raise doubts in the case of the prosecution. See the case of **Kwabena Amaning Alias Tagor and Anor. v. The Republic** (200) 23 MRLG 78.

The circumstances under which a submission of no case can be properly made and upheld are discussed seriatim, in the light of the ingredients of the charge against the accused person and the evidence led by the prosecution in support of the charge to determine if there is a genuine for a full trial.

## ANALYSIS

On **count 1**, the accused person is charged with dangerous driving contrary to **Section 1** of the Road Traffic Act, 2004 (Act 683) as amended by the Act 761 provides that

*“(1) A person who drives a motor vehicle dangerously on a road commits an offence and is liable on summary conviction*

*(a) where*

*(i) no bodily injury; or*

*(ii) a minor bodily injury*

*occurs to any person other than the driver, to a fine not less than ten penalty units and not exceeding twenty penalty units or to a term of imprisonment for a term not exceeding six months or both;*

*(b) where bodily injury of an aggravated nature occurs to any person other than the driver, to a minimum fine of twenty five penalty units and not exceeding fifty penalty units or to a term of imprisonment of not less than eight months and not exceeding sixteen months or to both; or*

*(c) where death occurs, to imprisonment for a term of not less than three years and not more than seven years.*

*(d) where there is damage to state property, to a fine not less than ten penalty units and payment for the damage caused in an amount determined by the court.*

*(2) The court may upon the conviction of any person under subsection (1),*

*(a) order the payment of compensation as the court may consider appropriate to an injured person or to the estate of the person; or*

*(b) order the withdrawal of the licence for a period of not less than three years years and not more than five years.”*

**Section 2** of the Act defines what constitutes dangerous driving by stating that a person drives dangerously under the following circumstances;

(a) the way that person drives falls below what is expected of a competent and careful driver, or

(b) it is obvious to a competent and careful driver that it would be dangerous driving the vehicle

(i) in that manner, or

(ii) in its current state.

**Section 2(2)** further states that in determining what is expected of, or obvious to, a competent and careful driver in any particular case, regard shall be had to

(a) the circumstances of which the accused could be expected to be aware,

(b) any circumstances shown to have been within the knowledge of the accused, and

(c) the conditions of the road at the relevant time.

Under **Section 2(3)** in determining for the purpose of **subsection (1)** the state of a motor vehicle, regard may be had to anything attached to or carried on or in it and the manner in which it is attached or carried.

To prove that the accused person herein on the day of the alleged incident drove dangerously and caused harm to the deceased, the first prosecution witness, investigator *No. 43679* General Corporal Kingsley Addo stationed at the Regional Motor Traffic and Transport Department, Tema testified that on 11<sup>th</sup> February, 2017 at about 9:50 pm, the accused person and others came to the station and reported that he was driving a Mercedes Benz 4x4 with registration *number GR 3388-17* along the Tema-Sakumono beach road between the hours of 5:00 pm and 6:00 pm towards Sakumono direction and crashed with a Royal Motorbike with registration number *M-11- GT 4138*.

Upon receipt of the complaint, he visited the Tema General Hospital to confirm the report and was told that the deceased died upon his arrival. The post-mortem report

was admitted and marked as **Exhibit “A”**. The two (2) witnesses and the deceased family members led him to the accident scene at a spot along the Sakumono-Tema beach road near the Community 3 traffic light intersection. At the scene, the two (2) motor vehicles, the Mercedes Benz 4x4 with registration number *GR 3388-17* and the Royal Motorbike with registration number *M-11-GT 4128* were not found. However, he observed broken vehicular particles in the right lane of the road when facing Tema direction, and a pool of blood was found on the shoulder of the said lane as the exact spot where the deceased rider fell. Other evidential spots namely; the point of impact and the resultant position of the deceased rider were also identified but measurements could not be taken at that hour due to poor visibility.

Additionally, PW1 testified that he had a phone call whilst at the scene that the two accident motor vehicles had been towed from the scene to the Sakumono MTTD's office by some Police officers who visited the scene. He also obtained an investigation caution statement from the accused person admitted and marked as **Exhibit “B”** and statements from the witnesses. He also took photographs of the accident vehicle and tendered same in evidence as **Exhibit “C”**. The two (2) accident vehicles were towed from the Sakumono Police Station to the Community 2 Police station and same impounded for testing.

On the 15<sup>th</sup> of February, 2017, he revisited the accident scene together with the accused person, Nkem Ferguson and Tony Loku, and two other persons. During the scene investigation, the accused person directed the police officers to a different location on the same right lane of the road while facing the direction of Tema. This location was about 40 meters away from where the second prosecution witness had previously pointed. The accused person showed the officers where he had stopped after the collision, and this spot was marked as number (1) on the sketch on the shoulder of the same lane. The accused person also confirmed the resultant position of the deceased as earlier identified by the second prosecution witness. Again, the accused person pointed to the police where he joined the oncoming lane and started overtaking vehicles moving

towards his direction. He took measurements and sketched the scene which was tendered and marked as **Exhibit "D"**. The two (2) accident vehicles were tested by a DVLA Technical officer and he received the testing reports which were tendered and marked **Exhibit "E"**, which states that the vehicle of the accused person was found to be in good working condition before the accident and the driver when tested was found to have good knowledge in road signs and responds perfectly to road regulations.

According to the investigator, his investigation revealed that on 11<sup>th</sup> February 2017 between the hours of 5:00 p.m and 6:00 p.m., the accused driver was in charge of a silver coloured Mercedes Benz G270 station wagon with registration *number GR 3388-17* with witness Tony Loku on board driving from Tema heading towards Sakumono along the beach road. On reaching a section of the road at Community 3, there was vehicular traffic ahead in his lane whilst the oncoming lane was free-flowing. Just after the Community 3 traffic light intersection, the accused person moved into the oncoming lane and started overtaking the long queue of motor vehicles. In the course of the overtaking, the offside front portion of his vehicle crashed with an oncoming Royal Motorbike with registration *number M-11-GT 4138* ridden by the deceased Tamimu Saka aged 43 years who was riding from Sakumono towards Tema in the right lane. The rider sustained injuries and was rushed to the Tema General Hospital but was pronounced dead on arrival. After investigations, a duplicate docket was sent to the Attorney General's Department for advice, and on the receipt of the advice, the accused person was charged with the offences as directed by the Attorney General's Department. He tendered in evidence the charge statement of the accused person admitted and marked as **Exhibit "F"**

The second prosecution witness, Ankem Ferguson, a security guard at Westec Security gave an eyewitness account when he testified that he lives at Sakumono Village and that on 11<sup>th</sup> February 2017, at about 5:45 pm, he was riding his motorbike along the Sakumono-Tema beach road towards Community 2. Whilst approaching the Community 3 SSNIT flats Site B' small gate, he was following another motorbike rider



who was about 50 meters ahead in the same direction. According to him, there was vehicular traffic in the opposite lane from Tema. He saw a silver-coloured Mercedes Benz 4X4 also known as G-WAGON coming out from the vehicular queue and moving on top speed against the Sakumono -Tema lane and facing their direction. The Mercedes Benz 4X4 crashed into the motorbike ahead of him in their lane, and the impact threw the rider away onto the shoulder of their lane and scattered some of the parts of the motorbike in the lane. The accused person who was driving the Mercedes Benz 4X4 with registration *number GR 3388-17* could not stop immediately but continued moving towards him through the shoulders of the road. He states that he thought the accused person would not stop when he drove past him so he decided to turn around and chase him but he eventually stopped and reversed to the scene of the accident. The accused driver had a passenger on board his vehicle by the name of Tony Loku and they all assisted in carrying the rider from a pool of blood into a taxi cab to the Tema General Hospital but he was pronounced dead on arrival. Thereafter, he contacted the family of the deceased and they came immediately to the hospital.

Learned counsel for the accused person contends that the accused person on the date of the accident drove with utmost care and that it was rather the motor rider who drove carelessly on the road. He therefore maintains that the prosecution has failed to make a sufficient case to warrant calling on the accused person to open his defence.

From the evidence led by the prosecution, particularly the account of the witness, the accused person was driving at an excessive speed moving against the Sakumono-Tema lane and facing their direction. Again, the eye witness states that the accused person after crashing the motor rider in their lane could not stop immediately but continued towards him through the shoulders of the road. In the face of this evidence, a reasonable court may convict if the accused person fails to open his defence to explain circumstances within his knowledge leading to the accident. I therefore hold that the accused person has an explanation to give and that the submission of no case is dismissed on this court. The accused person shall prepare to open his defence.

## **COUNT 2**

On **Count 2**, the accused person is charged with Negligently Causing Harm contrary to **Section 172** of the Criminal Offences Act, 1960 (Act 29). The section provides that a person who negligently and unlawfully causes harm to any other person commits a misdemeanour. P. K. Twumasi in his book **Criminal Law in Ghana** defines negligence as “*any conduct which is wanting in the skill and care as are reasonably necessary under the circumstances*”. The learned author states at page 604 that:

*“the essence of liability for negligence is failure to do what is reasonably expected in the circumstances... An event is a pure accident if it occurs unexpectedly and without apparent cause; therefore, a person charged with negligent act who intends to put up the defence of accident must adduce evidence which is true or reasonably probable to show that he did not cause or contribute to cause the vent by any act or omission which amounted to negligence, but that the vent occurred unexpectedly and without apparent cause”*

Also, any proof of a breach of the road traffic regulations resulting in an accident can be prima facie proof of negligence. Thus, such a driver may under certain circumstances be bound to explain why his vehicle behaved in such a manner especially when the accident report shows that the car was in good working condition.

In the instant case, the evidence of the prosecution is that the accused person veered off his lane where there was heavy vehicular traffic and crashed with the motor vehicle. There is, therefore, prima facie evidence of negligence which the accused person must open his defence to give his version of events resulting in the death of the deceased. The submission of no case is dismissed. The accused person shall prepare to open his defence.

**SGD.**  
**H/H AGNES OPOKU-BARNIEH**  
**(CIRCUIT COURT JUDGE)**